

No. 13970

United States
Court of Appeals
for the Ninth Circuit

WONG GONG FAY,

Appellant,

vs.

HERBERT W. BROWNELL, JR., Attorney General
of the United States,

Appellee.

Transcript of Record

Appeal from the United States District Court for the
Northern District of California,
Southern Division.

FILED

OCT 23 1953

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

SALVATORE C. J. FUSCO, ESQ.,

835 Clay Street,

San Francisco 8, Calif.,

For Appellant.

LLOYD H. BURKE, ESQ.,

United States Attorney,

CHARLES ELMER COLLETT, ESQ.,

Assistant United States Attorney,

San Francisco, California,

For Appellee.

In the District Court of the United States, Northern
District of California, Central Division

No. 30960—Civil

WONG GONG FAY,

Plaintiff,

vs.

HERBERT BROWNELL, JR., Attorney General
of the United States,

Defendant.

EXCERPT FROM DOCKET ENTRIES

1951

Oct. 18—Filed complaint and issued summons.

Dec. 18—Filed answer of defendant.

1953

May 5—Filed supplemental answer of defendant.

May 7—Court trial.

May 8—Court trial. Judgment ordered for defendant and counsel to prepare findings of fact, conclusions of law and judgment.
(Roche.)

May 22—Filed findings of fact and conclusions of law. (Roche.)

May 22—Filed judgment for defendant without costs.

May 25—Entered judgment, mailed notices.

June 16—Filed notice of appeal by plaintiff.

June 16—Filed appellant's designation of record on appeal.

June 16—Filed appeal bond in sum \$250.00.

June 17—Mailed notices.

1953

June 10—Filed reporter's transcript of argument of Jack Sing, Feb. 3, 1953.

July 23—Filed order extending time to docket record on appeal to Aug. 31, 1953. (Carter.)

Aug. 6—Filed reporter's transcript of proceedings May 7 & 8, 1953.

In the District Court of the United States, Northern
District of California, Central Division

No. 30960

WONG GONG FAY,

Plaintiff,

vs.

J. HOWARD McGrath, Attorney General of the
United States, Washington, D. C.,
Defendant.

COMPLAINT

Comes now the plaintiff in the above-entitled action, and for his cause of action against the defendant herein, alleges as follows:

I.

That the defendant hereinabove named is and has been at all times herein mentioned the Attorney General of the United States at Washington, D.C., and as such is the head of the United States Department of Justice.

II.

That plaintiff has been, and at all times herein stated, is still being held in restraint and being denied his liberty by the defendant in that the plaintiff is confined to the Immigration Detention Quarters at San Francisco, California, and further that the defendant has ordered the plaintiff to be deported from the United States as an alien.

III.

That plaintiff's father, Wong Hie, is a citizen and national of the United States and is now a resident of the City and County of San Francisco, California, and further that the plaintiff was born on May 15, 1926, in Toyshan, Kwangtung, China, and that the plaintiff herein is the natural and legitimate son of the above-named Wong Hie and further that the plaintiff is a citizen and national of the United States by virtue of the provisions of Revised Statutes 1993, as amended, and further that the plaintiff is a resident of the City and County of San Francisco, California.

IV.

That plaintiff claims a right and privilege as a national and citizen of the United States and further claims the attending rights and privileges to enter and remain in the United States and to enjoy all pertinent rights and privileges therein, and further that plaintiff alleges that defendant herein named has denied and still continues to deny said rights and privileges to the plaintiff and that the

executory officials of the Department of said defendant have denied and continue to deny the plaintiff such rights and privileges as a national and citizen upon the grounds that the plaintiff herein named is not a national and citizen of the United States.

V.

That the plaintiff has prosecuted this action pursuant to provisions of Section 503 of the Nationality Act of 1940 for a judgment declaring the plaintiff to be a national of the United States.

Wherefore, plaintiff prays:

1. That the defendant herein or other proper representatives, agents or officials of the United States government be requested to appear and answer this complaint.

2. That a time and date be set for hearing the evidence to be adduced on behalf of plaintiff and his witnesses.

3. That pending the hearing and determination of this action the plaintiff be released from the custody of the Immigration and Naturalization Service and of the defendant and that plaintiff be allowed to remain in the custody of his father herein named under reasonable bond.

4. For a judgment of this honorable court declaring the plaintiff to be a national of the United States;

And for such other and further relief as may be meet and just in the premises.

(Chinese signature)

WONG GONG FAY,
Plaintiff.

/s/ SALVATORE C. J. FUSCO,
Attorney for Plaintiff.

Duly verified.

[Endorsed]: Filed October 18, 1951.

[Title of District Court and Cause.]

ANSWER

Comes Now J. Howard McGrath, Attorney General of the United States, defendant in the above-entitled action, by and through his attorneys, Chauncey Tramutolo, United States Attorney, and Edgar R. Bonsall, Assistant United States Attorney, and in answer to plaintiff's complaint, admits, denies and alleges as follows:

I.

Answering Paragraph I of the Complaint, defendant admits the allegations contained in Paragraph I of the Complaint.

II.

Answering Paragraph II of the Complaint, defendant admits that he has ordered the plaintiff to be deported from the United States. Defendant

denies that plaintiff is now restrained of his liberty and affirmatively asserts that plaintiff was released under bond on October 23, 1951.

III.

Answering Paragraph III of the Complaint, defendant admits that plaintiff's alleged father Wong Hie has been recognized by the Immigration and Naturalization Service as a citizen of the United States. Defendant denies that plaintiff is the natural and legitimate son of Wong Hie or that the plaintiff is a citizen or national of the United States. Defendant affirmatively asserts that plaintiff did not derive United States citizenship or nationality under the provisions of Section 1993, United States Revised Statutes, as amended, or under any other law or statute. Defendant has no knowledge, information or belief as to the other allegations contained in Paragraph III of the Complaint and therefore denies the same.

IV.

Answering Paragraph IV of the Complaint, defendant admits the allegations contained in Paragraph IV of the Complaint but denies that plaintiff is in fact a national or a citizen of the United States or that he is entitled to any of the rights or privileges of a national or citizen of the United States.

V.

Answering Paragraph V of the Complaint, defendant admits the allegations contained therein but affirmatively asserts that plaintiff is not entitled to a judgment declaring him to be a national or citizen of the United States.

First Affirmative Defense

Defendant affirmatively asserts that plaintiff is not the blood son of Wong Hie and therefore is not a citizen of the United States.

Wherefore, defendant prays each and every relief sought by the plaintiff be denied; that this Court declare a judgment in favor of the defendant that plaintiff has never been a citizen of the United States; and that the defendant recover his proper costs against the plaintiff in this action.

/s/ CHAUNCEY TRAMUTOLO,
United States Attorney,

/s/ EDGAR R. BONSTALL,
Assistant United States Attorney, Attorneys for
Defendant.

[Endorsed]: Filed December 18, 1951.

[Title of District Court and Cause.]

SUPPLEMENTAL PLEADING AND MOTION
TO SUBSTITUTE PARTY DEFENDANT
UNDER RULE 25 (d) R.C.P.

Plaintiff, Wong Gong Fay, pursuant to the provision of Rule 25 (d) of the Federal Rules of Procedure, in the above-entitled cause of action, moves this court for an order substituting James P. McGranery as Attorney General of the United States as a party defendant herein in his said representa-

tive capacity in the place and stead of his predecessor in said public office, J. Howard McGrath, who during his period of office was named as party defendant in his representative capacity as Attorney General of the United States and further in order to show to the satisfaction of this court that there is a substantial need for the continuance and maintenance of this action against the said defendant and his agents under his authority against whom his proceeding was instituted the plaintiffs herein set forth and allege as follows:

1. James P. McGranery heretofore was appointed Attorney General of the United States and on May 27, 1952, took oath of office as Attorney General of the United States and thereupon commenced the performance of his duties as such public officer and since then holds and at present does hold said public office.

2. That said James P. McGranery in his said representative capacity is the successor in said public office to his predecessor, J. Howard McGrath, who has been named as party defendant in the above-entitled action and that James P. McGranery as Attorney General of the United States is a real party in interest and a necessary and indispensable party defendant in this cause of action as provided for by Code Section 503 of the Nationality Act of 1940.

Wherefore, plaintiffs pray for an order of this court substituting James P. McGranery in his representative capacity as Attorney General of the

United States in the place and stead of his predecessor, J. Howard McGrath in that said capacity.

/s/ SALVATORE C. J. FUSCO,
Attorney for Plaintiffs.

[Endorsed]: Filed December 12, 1952.

[Title of District Court and Cause.]

ORDER GRANTING MOTION TO SUBSTITUTE PARTY DEFENDANT

Plaintff has moved the Court for substitution of now Attorney General James P. McGranery, successor to J. Howard McGrath. Defendant contends that plaintiff has not filed timely, in accordance with the requirements of Federal Rules of Civil Procedure 25(d) and that the cause of action must be declared abated.

In an action against a federal official in which plaintiff seeks to compel such official to discharge his duties, the action abates when the official dies or retires from office. But the instant action seeks declaratory relief, namely, a finding of nationality status of plaintiff. Thus the language of Judge Goodman in *Ly Moon and Ly Sue Ning v. Acheson*, Nos. 30159, 31161, is applicable; “* * * despite the fact that the Secretary of State (in this instance Attorney General) is party defendant, in every sense the people of the United States (the United States of America) are defendants.”

The Attorney General is named as the representative of the United States government. Substitution

of party defendants is one of form and not of substance.

Accordingly, it is Ordered that the motion to substitute party defendant be, and the same hereby is, Granted.

Dated: January 19, 1953.

/s/ GEORGE B. HARRIS,
United States District Judge.

Defense Corp. v. Lawrence Co.,
336 U.S. 631.

[Endorsed]: Filed January 20, 1953.

[Title of District Court and Cause.]

MOTION FOR REHEARING

On January 19, 1953, this Court ordered that the motion of plaintiff to substitute former Attorney General James P. McGranery, successor to J. Howard McGrath, as party defendant herein, be granted. In its order the court relied on the language found at page 5 in the opinion of Judge Louis E. Goodman dated January 12, 1953, in the cases of *Ly Shew vs. Acheson*, Civil Nos. 30159 and 31161, and further relied on the case of *Defense Corp. v. Lawrence Co.*, 336 U.S. 631.

Now comes the defendant and moves for rehearing on the following grounds:

1. Congress of the United States has by statute, 8 U.S.C. 903, permitted the filing of the above suit.

2. Rule 25(d) of Federal Rules of Civil Procedure specifically provides the time and manner in which substitution of parties may be made, and Rule 6(b) does not permit an extension of time.

3. The Supreme Court of the United States in *Snyder v. Buck*, 340 U. S. 15, held in a parallel matter that an action abated for failure to substitute defendant within the prescribed period.

4. This Court, in the case of *Toshio Joji*, Civil No. 27557, granted on April 26, 1951, a motion to dismiss for failure to substitute the Attorney General of the United States as defendant in place of the Alien Property Custodian, pursuant to the provisions of Rule 25(d) Federal Rules of Civil Procedure.

5. The United States of America has not consented to be sued in such an action as is alleged in plaintiff's complaint.

Dated: January 23, 1953.

/s/ CHAUNCEY TRAMUTOLO,
United States Attorney.

NOTICE OF MOTION

To Plaintiff above named and Salvatore C. J. Fusco, 538 Front Street, San Francisco, California, his attorney:

Please Take Notice that the undersigned will bring the attached Motion for Rehearing on for hearing before the above-entitled Court, at Room

276, Post Office Building, 7th and Mission Streets, City and County of San Francisco, California, on the 26th day of January, 1953, at 10:00 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard.

/s/ CHAUNCEY TRAMUTOLO,
United States Attorney.

[Endorsed[: Filed January 26, 1953.

[Title of District Court and Cause.]

ORDER DENYING MOTION FOR
RECONSIDERATION

The Court previously made its order granting plaintiff's motion to substitute party defendant. Thereafter defendant moved the Court to reconsider its ruling. The Court heard arguments and reviewed the authorities, including those submitted in the like case of Lew Shek Shan, et al., v. McGrath, No. 30127.

The Court now being fully advised, it is Ordered that defendant's motion for reconsideration be, and the same hereby is, Denied.

It Is Further Ordered that plaintiff's motion to substitute party defendant be, and the same hereby is, Confirmed.

Dated: February 24, 1953.

/s/ GEORGE B. HARRIS.

United States District Judge.

Fleming v. Goodwin,

165 F. 2nd 334;

Fleming v. People's Natural

Gas Co., 8 FRD 42;

FRCP 6(b).

[Endorsed]: Filed February 24, 1953.

[Title of District Court and Cause.]

NOTICE OF MOTION

To the defendant above named and the United States Attorney, C. Tramutolo, and Edgar R. Bon-sall, Assistant United States Attorney, Post Office Building, San Francisco, California, and his at-torney.

Please take notice that on Monday, March 23, 1953, at the hour of 9:30 a.m., or as soon there-after as the matter can be heard in the Law and Motion Department, United States District Court, Post Office Building, Seventh and Mission Streets, San Francisco, the attorney for the Plaintiff will present a motion for substitution of party de-fendant.

The copy of this motion is attached herewith and made a part thereof.

/s/ SALVATORE C. J. FUSCO,

Attorney for Plaintiff.

[Title of District Court and Cause.]

MOTION FOR SUBSTITUTION OF
PARTY DEFENDANT

Comes now the Plaintiff in the above entitled action by and through counsel of record and moves this court for an order substituting Herbert Brownell, Jr., as Attorney General of the United States in the place and stead of the defendant, James P. McGranery, as Attorney General.

Said motion being filed pursuant to the provision of Rule 25 of the Federal Rule of Civil Procedure.

/s/ SALVATORE C. J. FUSCO,
Attorney for Plaintiff.

Receipt of copy acknowledged.

[Endorsed]: Filed March 18, 1953.

[Title of District Court and Cause.]

AFFIDAVIT OF SALVATORE C. J. FUSCO IN
SUPPORT OF MOTION TO SUBSTITUTE
PARTY DEFENDANT

Salvatore C. J. Fusco, being first duly sworn, deposes and says:

1. He is the attorney for the plaintiff in the above entitled action and that James P. McGranery, defendant in the above entitled action, resigned from his office as Attorney General, and that Herbert Brownell, Jr., was duly appointed as Attorney General in the place and stead of the defendant, James P. McGranery, on or about January 21, 1953,

and that Herbert Brownell, Jr., has entered upon the duties of said office on or about January 21, 1953, and as such holds said office.

2. There is substantial need for continuing and maintaining said cause of action and obtaining adjudication of the question involved for the reason that the executing official of the Department of State has refused to recognize said plaintiff's claim of United States Nationality.

3. Your affiant is informed and on such information and belief states that Herbert Brownell, Jr., as Attorney General by and through his subordinate official will continue to deny the said plaintiff's claim of United States Nationality.

/s/ SALVATORE C. J. FUSCO,
Attorney for Plaintiff.

[Endorsed]: Filed March 18, 1953.

[Title of District Court and Cause.]

ORDER SUBSTITUTING PARTY
DEFENDANT

The motion for substitution of party defendant in this cause coming on to be heard before the court, and the court being fully advised in the premises, and it appears that the defendant, James P. McGranery, Attorney General of the United States, has been replaced by Herbert Brownell, Jr., as Attorney General, it is by this court the 30th day

of March, 1953, hereby ordered that Herbert Brownell, Jr., as Attorney General, be and he is hereby substituted as party defendant in this cause in the place and stead of James P. McGranery, as Attorney General.

/s/ EDWARD P. MURPHY,
Judge of the District Court.

[Endorsed]: Filed March 30, 1953.

[Title of District Court and Cause.]

SUPPLEMENTAL ANSWER

Comes now Herbert Brownell, Jr., Attorney General of the United States, by and through his attorney Lloyd H. Burke, United States Attorney for the Northern District of California, and Charles Elmer Collett, Assistant United States Attorney, and as a supplemental answer to plaintiff's complaint urges the following additional defense:

I.

That the answer previously filed be and is hereby adopted and made a part hereof.

II.

Plaintiff filed his complaint against J. Howard McGrath, Attorney General of the United States, on October 18, 1951. On December 11, 1952, plaintiff filed a motion to substitute James P. McGranery, who replaced former Attorney General

J. Howard McGrath on May 27, 1952. Plaintiff's motion to substitute was filed more than six months after James P. McGranery had replaced J. Howard McGrath as Attorney General of the United States and under Rule 25(d) of the Rules of Civil Procedure the action has abated.

Wherefore, defendant respectfully prays that the complaint and causes of action therein be dismissed.

LLOYD H. BURKE,

United States Attorney,

By /s/ CHARLES ELMER COLLETT,

Assistant United States
Attorney.

Affidavit of Service by Mail attached.

[Endorsed]: Filed May 5, 1953.

[Title of District Court and Cause.]

MINUTE ORDER—MAY 8, 1953

This cause came on regularly for further trial this date. Arguments of counsel were heard and both parties rested, and it was ordered that judgment be entered for the defendant and against the plaintiff, upon the preparation of findings of fact and conclusions of law, and a form of judgment, by counsel for said defendant.

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above-entitled action came on for trial on the 7th and 8th days of May, 1953, before the above-entitled court, Honorable Michael J. Roche presiding; Salvatore C. J. Fusco appearing as attorney for the plaintiff, and Lloyd H. Burke, United States Attorney for the Northern District of California, and Charles Elmer Collett, Assistant United States Attorney, appearing as attorneys for the defendant; and evidence having been received therein and the court having fully considered the same, now hereby makes the following Findings of Fact and, from said Findings of Fact, draws the following Conclusions of Law:

Findings of Fact

That the person who calls himself Wong Gong Fay and who claims to be the son of Wong Hie has failed to introduce evidence of sufficient clarity to satisfy or convince this court that Wong Hie is the natural blood father of the person, Wong Gong Fay, or that he was born at the time and place claimed, or that the person who appeared before this court claiming to be Wong Gong Fay is in truth and in fact Wong Gong Fay.

Conclusions of Law

The person appearing before this court as plaintiff in this action is not entitled to the relief prayed for in the petition.

Let Judgment be Entered Accordingly.

Dated: May 22, 1953.

/s/ MICHAEL J. ROCHE,
United States District Judge.

[Endorsed]: Filed May 22, 1953.

In the United States District Court for the
Northern District of California, Southern
Division

Civil No. 30960

WONG GONG FAY,

Plaintiff,

vs.

HERBERT BROWNELL, JR., as Attorney Gen-
eral of the United States, Washington, D. C.,
Defendant.

JUDGMENT

The above-entitled action came on for trial on the 7th and 8th days of May, 1953, before the above-entitled court, Honorable Michael J. Roche presiding; Salvatore C. J. Fusco appearing as attorney for the plaintiff, and Lloyd H. Burke, United States Attorney for the Northern District of California, and Charles Elmer Collett, Assistant United States Attorney, appearing as attorneys for the defendant; the evidence having been received, the court having fully considered the same, and having

filed herein its Findings of Fact and Conclusions of Law, and having directed that judgment be entered in accordance therewith;

Now, therefore, it is hereby Ordered, Adjudged and Decreed:

I.

That the relief sought by the plaintiff be and the same is denied.

So Ordered.

This 22nd day of May, 1953.

/s/ MICHAEL J. ROCHE,
United States District Judge.

Lodged May 13, 1953.

[Endorsed]: Filed May 22, 1953.

Entered May 25, 1953.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given this 16th day of June, 1953, that plaintiff hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment of this court entered on the 22nd day of May, 1953, in favor of defendant against said plaintiff.

/s/ SALVATORE C. J. FUSCO,
Attorney for Plaintiff.

[Endorsed]: Filed June 16, 1953.

[Title of District Court and Cause.]

COST BOND OF APPEAL

Whereas, The above-named Plaintiff has appealed to the United States Court of Appeals for the Ninth Circuit from the Judgment entered against him in said action, in the United States District Court, in and for the Northern District of California, Southern Division.

Now, Therefore, in consideration of the premises, and of such appeal, the undersigned, Maryland Casualty Company, a corporation duly organized and existing under the laws of the State of Maryland, and duly authorized to transact a general surety business in the State of California, does undertake and promise on the part of the appellant, to secure the payment of costs if the appeal is dismissed, or the Judgment affirmed, or such costs as the Appellate Court may award if the Judgment is modified, not exceeding the sum of Two Hundred Fifty and No/100 (\$250.00) Dollars, to which amount it acknowledges itself bound.

It is expressly agreed by the Surety that in case of a breach of any condition hereof, the above-entitled Court, may upon notice to the Surety of not less than ten (10) days proceed summarily in the above-entitled action in which this bond is given, to ascertain the amount which the Surety is bound to pay on account of such breach and render judgment therefor against the Surety and award execution therefor, all as provided by and in accordance

with the intent and meaning of rule 34 of the Rule of Practice of the United States District Court in and for the Northern District of California.

In Witness Whereof, the corporate seal and name of the said Surety Company is hereto affixed and attested at San Francisco, California, by its duly authorized officer, this 10th day of June, 1953.

MARYLAND CASUALTY
COMPANY,

By /s/ W. G. KELSO,
Attorney-in-Fact.

The Premium on this bond is \$10.00 per annum.

State of California,
City and County of San Francisco—ss.

On this 10th day of June, 1953, before me, A. McClintock, a Notary Public in and for the City and County of San Francisco, personally appeared W. G. Kelso, known to me to be the Attorney-in-Fact of the Maryland Casualty Company, the corporation described in and that executed the within instrument, and also known to me to be the person who executed it on behalf of the corporation therein named, and he acknowledged to me that such corporation executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my Official Seal at my Office in

the City and County of San Francisco the day and year in this Certificate first above written.

[Seal] /s/ A. McCLINTOCK,
Notary Public in and for the City and County of
San Francisco, State of California.

My commission expires January 12th, 1957.

[Endorsed]: Filed June 16, 1953.

[Title of District Court and Cause.]

ORDER EXTENDING TIME TO FILE
RECORD AND DOCKET APPEAL

On motion of Salvatore C. J. Fusco, attorney for the above-named appellant, and good cause appearing therefor:

It Is Hereby Ordered that the time in which the above-named appellant may file the record and docket the appeal in the above-entitled matter is extended to and including the 31st day of August, 1953.

Dated this 23rd day of July, 1953.

/s/OLIVER J. CARTER,
United States District Judge.

[Endorsed]: Filed July 23, 1953.

In the District Court of the United States for the
Northern District of California, Southern
Division

No. 30960

WONG GONG FAY,

Plaintiff,

vs.

HERBERT W. BROWNELL, JR., Attorney Gen-
eral of the United States, Washington, D. C.,
Defendant.

Before: Hon. Michael J. Roche, Judge.

REPORTER'S TRANSCRIPT PROCEEDINGS
ON TRIAL

Appearances:

For the Plaintiff:

SALVATORE C. J. FUSCO, ESQ.

For the Defendant:

LLOYD H. BURKE, ESQ.,

United States Attorney, by

CHARLES ELMER COLLETT, ESQ.,

Assistant United States Attorney.

Thursday, May 7, 1953—10:00 A.M.

Mr. Fusco: Your Honor, in this matter, the plaintiff, Wong Gong Fay, was held in detention, and on October 23, four or five days after the filing of this complaint, he was released on bond.

We are going to show that Wong Gong Fay is the son of an American citizen and as such is entitled to all rights and privileges of an American citizen.

We have three witnesses, in addition to the defendant, the father and friends and several documents.

The administrative procedures have been exhausted. The appeal denied his rights, and the administrative rights have been exhausted.

The Court: I will hear from the Government.

Mr. Collett: If the Court please, primarily, I think it will be necessary to call the Court's attention to the fact that we have filed, after a substitution was allowed, a supplemental answer, which is in the file, in behalf of the Attorney General Brownell, which raises a special defense that this action has abated. The plaintiff neglected to file a motion to substitute until after six months, after the appointment and the assumption of office by Attorney General McGranery following Attorney General McGrath, and the matter was presented to Judge Harris. He permitted the substitution. [2*]

We have raised the special defense that the action has abated, and the case of Snyder vs. Buck, of the Supreme Court, and Rule 25-D, and also the case of United States vs. Courussi in 168 Federal Reporter, 2nd Series, which we think holds conclusively that the action has abated.

Now it is a matter which has presented some difficulty to the courts to whom it has been pre-

***Page numbering appearing at top of page of original Reporter's Transcript of Record.**

sented. They perhaps have felt maybe there shouldn't be such a rule as 25-D——

Mr. Fusco: We propose an objection at this time.

Mr. Collett: There is nothing to object to. I don't think at this time.

The Court: No, he is only indicating now.

Mr. Fusco: Yes, your Honor.

Mr. Collett: Counsel was probably going to advise you that Judge Harris permitted the substitution. Permitting the substitution is different from a defense which is interposed, maybe by a special defense or by a motion to dismiss, which then again calls to the court's attention the ruling Judge Harris made permitting the substitution to go on and let the trial court determine whether or not it has abated.

I think unfortunately Rule 25-D is conclusive and——

The Court: I am not familiar with the rule. Will you read it?

Mr. Collett: This was a proceeding against the Commissioner of Immigration and Naturalization to set aside [3] the deportation order and it was abated and no application was made to substitute a successor, when the Commissioner resigned, or as a party respondent, until nearly nine months after the former Commissioner's resignation:

“Officers of the United States may be sued and suit against them may be maintained only pursuant to the rules of law laid down by Congress. The decision of the Supreme Court with respect to time

to making application to continue action against the successor to the Federal office who was a party to the action was binding upon the Circuit Court of Appeals.”

That is a Third Circuit case; the case of *Snyder vs. Buck*, also held to the same effect under substitution.

The Court: What is the date of that?

Mr. Collett: This is July the 8th, 1948.

The matter is procedural. There is a rule which I think your Honor is mindful of, the rather lengthy article that was written by Mr. Longsdorf, that appeared recently on substitution, and although, as far as the defense is concerned, there is no matter of endeavoring to avoid an action, we feel that where the action has abated, that counsel is pursuing a matter which is rather futile. Now I felt it necessary to call the Court's attention at the outset to the fact that he is confronted with this [4] problem.

The Court: Call your first witness.

Mr. Fusco: I shall call the father, your Honor. I request an interpreter.

The Court: Where is the interpreter.

(Chew F. Lew, an official Chinese interpreter, was thereupon sworn to truthfully and accurately and fully translate from the English language into the Chinese language, and from the Chinese language into the English language.)

Mr. Collett: If the Court please, with regard

(Testimony of Wong Hai.)

to the Interpreter, I understand that this man was allegedly born in the United States and has lived his entire life in the United States, except for possibly two years, and I would like this Court to be satisfied that he is not able to speak the English.

WONG HAI

called as a witness on behalf of Plaintiff, sworn through the Interpreter.

The Court: What is your name?

The Witness: Wong Hai.

The Court: Speak louder. Speak up. What is it?

The Witness: What name?

The Court: What is your name? [5]

A. Wong Hai.

Q. How do you spell it. Spell the name.

A. I don't know.

Q. How long have you been in the United States? A. Long time.

Q. What is it? How many years?

A. I lived here about——

Q. What? A. Long time.

Q. How many years? How many years have you been in the United States?

A. Oh, 50 years at least.

Q. What is it?

The Clerk: 50 years.

The Court: What is your business or occupation? What do you do?

(Testimony of Wong Hai.)

A. I have no business.

Q. What's that?

A. I no talk English. Not much.

The Court: Now you will have to speak loud enough so the Reporter will be able to hear you. He must take down everything you say. What is your full name?

A. Wong Hai.

Q. You speak up loudly so the Reporter can hear you. He has to hear you. What is it? What is your name? [6]

A. Wong Hai.

Q. And where do you live?

A. Jackson Street.

Q. What is the number? A. 980.

Q. What do you do? What is your business or occupation?

A. Store. Work in a store.

Q. What store?

A. Store on Grant Avenue.

Q. What is the number there?

A. 911.

Q. What kind of a store is that?

A. Chinese grocery.

Q. What is it? A. Chinese grocery.

Q. How long have you been in that store, how long?

A. 28.

Q. What do you do in that store, what kind of work do you do? Do you sell goods?

A. Yes.

Q. Do you sell to people?

A. Grocery business. Chinese grocery, I sell.

Q. What is it? A. Grocery.

Q. Grocery? [7] A. Yes.

Q. Do you own that business?

(Testimony of Wong Hai.)

A. Importers.

Q. You own that business? A. Yes.

Q. Who else is in the store with you?

A. Who?

Q. Yes, who? A. Wing Hin Tin.

Q. Spell it. Spell it for the Reporter.

A. I know not how to talk.

Q. How can you run that store for 28 years and not be able to talk?

A. I talk Chinese.

Q. All Chinese customers? A. Yes.

Q. Do you know whether or not this witness can speak English at all?

Mr. Fusco: That's the extent of it, your Honor.

The Court: Is his enunciation impaired in any way?

Mr. Fusco: No, I just think he has lived and done business in Chinatown on Grant Avenue so long that he has never had occasion to learn or to make any progress in his English.

The Court: Do you feel that we ought to have an interpreter? [8]

Mr. Fusco: Yes, your Honor. I have tried to talk with him——

The Court: Is the official interpreter here?

Mr. Collett: Yes, sir, there is. If the Court please, you inquire a little further. Counsel says that he has been in Grant Avenue for a long time. I don't think that is so.

The Court: 28 years.

Mr. Collett: In Yreka or——

(Testimony of Wong Hai.)

Mr. Fusco: I simply made the statement, your Honor, that if he has been in a store on Grant Avenue, I say that they don't speak English too often. They make no progress in English.

The Court: I think in the interests of time we better use the Interpreter. Is this the official interpreter, here?

Mr. Collett: Yes, your Honor.

(Thereupon the witness, Wong Hai, was sworn again through the Interpreter.)

The Court: You may proceed, Counsel.

(The following proceedings were had through the Interpreter.)

Direct Examination

By Mr. Fusco:

Q. Where were you born?

A. In California.

Q. What city or town? A. Yreka. [9]

Q. On what date?

A. The first month, tenth day, Chinese reckoning.

The Court: What would that be? What date would that be?

The Interpreter: I wouldn't know without a book.

The Court: Where is your book?

The Interpreter: Without the——

The Court: Where is the book?

(Testimony of Wong Hai.)

The Interpreter: I think Mr. Levine has it.

Mr. Collett: He was born here in the United States and doesn't know the American date?

Mr. Fusco: What difference does that make?

(Handing conversion table to Interpreter.)

Mr. Collett: What was the Chinese C.R.

The Court: The Date?

Mr. Collett: Mr. Interpreter, what are you translating from to the American equivalent?

The Court: We are trying to determine the American date. He is translating it.

The Interpreter: February 26th, 1901.

Mr. Collett: But what is the Chinese?

The Interpreter: He gave the year as 1901.

Mr. Collett: I understand, but what is the C.R.?

The Interpreter: It is Cong Suey, 27th year.

The Court: In American, that would be [10] what?

The Interpreter: February 28th, 1901.

The Court: He was born in Yreka—ask him.

Mr. Collett: Eureka or Yreka? A. Yreka.

Mr. Fusco: What is your father's name?

A. My father was Wong Yen Ying.

Q. And your mother's name?

A. Chew Loi Gam.

Q. When was the first time you went to China?

A. 1904.

Q. That is the first time you went to China?

A. Yes.

Q. When did you go to China again?

A. I didn't.

(Testimony of Wong Hai.)

Q. You what? A. I didn't.

Q. You didn't. Did you have a passport and documents? A. Yes.

Q. Were you married——

Mr. Collett: If the Court please, something must be wrong here. If he was born in 1901, went to China in 1904——

Mr. Fusco: He has got the dates wrong.

Mr. Collett: Let Counsel get himself squared away.

Mr. Fusco: My Interpreter said that he answered 1924, not 1904. [11]

The Court: I think you said 1904.

The Interpreter: Yes. Then I was mistaken.

The Court: 1924 it was. Any of us are liable to make mistakes, even an interpreter.

Mr. Fusco: When were you married?

A. First month, tenth day.

Q. Can you give us that in English, Mr. Interpreter?

Mr. Collett: Of what?

The Interpreter: February 2, 1925.

Q. (By Mr. Fusco): Where were you married?

A. Toi Shan City.

Q. What is your wife's name? What is the equivalent of the name? A. Low Chin Gum.

Q. Do you know your father-in-law's name or what's the equivalent to a father-in-law?

A. Low Gum Gio.

Q. Do you know your mother-in-law's name,

(Testimony of Wong Hai.)

or what's the equivalent to a mother-in-law, her name? A. Ng Shee.

Q. Were you married by ceremony?

A. Yes.

Q. What type of ceremony?

A. Chinese custom.

Q. Explain that, what that is, the Chinese custom? [12]

A. Consisting of getting cookies and all sort of, oh, traditional ways for marriage.

Q. What is the traditional way of marriage?

A. Everything was written up and there was match-maker.

Q. Were there friends present, relatives, friends, presents? That is what I want to know?

A. No, just a few brothers and a few friends.

Q. How many children have you? .

A. Two.

Q. Boys or girls? A. Sons.

Q. No girls? A. No.

Q. How long after you were married was your first son born?

Mr. Collett: If the Court please, I object at this time to the question. No proper foundation laid to establish the capability of this man to know when the child was born, whether he was in China at the time, the opportunity he would have to know of the birth. There is no foundation laid for it. The objection is made at this time.

The Court: In what respect has it not been laid?

(Testimony of Wong Hai.)

Mr. Collett: The man was in China to know, to testify as to the birth of a child, that must be established first, that he has had some opportunity to know of the birth of the child. There has been no testimony here to establish that [13] he had.

The Court: This is the alleged father.

Mr. Fusco: This is the father.

Mr. Collett: Yes, but if the child was born when he wasn't in China, we don't know that he was in China at the time the child was born at the present moment.

The Court: When was the child born? Ask him.

Mr. Fusco: Your Honor—I beg your pardon. If the Court please, we haven't said that he has returned. Our testimony has placed him in China. Our testimony this far has not shown any return or having left China.

Mr. Collett: That may very well be, but he hasn't testified.

The Court: Let's find out where the child was born. Ask him where this boy was born?

A. In Toi Shan City.

Q. China? A. China.

The Court: Proceed, counsel.

Mr. Fusco: Were you present at the time of the baby's birth? A. Which one?

Q. The first one. A. Yes.

Q. How long after your marriage was this first child born? [14]

A. About a year or so after my marriage.

Q. What was the date of the birth?

(Testimony of Wong Hai.)

A. C.R. 15, 44——

The Interpreter: Which is May 15, 1926.

Q. (By Mr. Fusco): Was there any attending doctors or nurses?

A. Yes, there was an elderly woman who helped out.

Q. Where was the boy born, in a hospital or where? Just what was it, the——

A. At home.

Q. By the elderly lady, what do you mean by that? Is that a person that does things for the other women in the village?

A. Yes, we just called upon her for her services.

Q. Does she give that service to other people in the village?

A. I don't know about that.

Q. Was there any record or any birth certificate or anything written at the time the baby was born?

A. No, in China they don't have such things.

Q. Was there any ceremony or any celebration at the time of the baby's birth?

A. No, except there was a small celebration when the baby was about a month old.

Q. That is the custom in China?

A. Yes. [15]

Q. Then other people were present and knew the baby was born?

A. At the time when the baby was born, at such time, I was the only one home.

Q. Do you have any other children?

(Testimony of Wong Hai.)

A. I have another smaller one, who was born after I returned to the United States.

Q. When was this boy born, if you know?

A. 1927.

Q. Do you know the date and the month?

A. Fourth month, eighth day.

Q. That's about May 8th, is it, according to the reckoning?

A. C.R. 16, 4, 8.

The Interpreter: That is the equivalent to May 8th, 1927.

Q. (By Mr. Fusco): Were you present in China when your second baby was born?

A. No, I was not in China. I returned to the United States.

Q. When did you return to the United States?

A. In 1926.

Mr. Fusco: Ask him what the Chinese calendar is, if he knows.

A. Chinese Republic 16th year.

Mr. Fusco: Ask him if he knows the month?

Mr. Collett: If the Court please, I suggest to help the [16] record, if Counsel would avoid asking questions to the Interpreter. It gives a little difficulty for the Interpreter to direct the question to the witness, which is directed actually to the Interpreter. In other words, the form. To ask the witness a question which is directed to the Interpreter.

The Court: What is your question?

Mr. Fusco: I simply directed the question for the purpose, inasmuch as the Interpreter had the

(Testimony of Wong Hai.)

book in his hand, and it was better available to him—that is, the information was better available. I was asking what the month was. May I start again?

Mr. Collett: It wasn't an objection. I was simply making the suggestion to help the record. There has been a little difficulty on this before.

The Court: There is great difficulty in all of these cases.

Q. (By Mr. Fusco): What date did you return to the United States?

A. I arrived at San Francisco on the President Pierce on December 15, 1926.

Q. Did you return to China after that date?

A. No.

Q. Have you made payments in support of your family? A. Yes. [17]

Q. What amounts and how often did you make these payments? Just tell us what you did, to the best of your recollection, throughout the period of time after you returned to the United States?

A. Before the war I used to send about one thousand Hong Kong money each year to my family, divided into three remittances.

Q. To whom did you send that money?

A. I sent this money to my son in Toi Shan City, who gave the money to my wife, for the family expenses.

Q. Now just going back a bit, when you returned to the United States in 1926, did you make

(Testimony of Wong Hai.)

a landing statement, did you make any statement to the authorities when you landed?

A. How do you mean by that? Oh, yes.

Q. Did you say, "Oh, yes."

The Interpreter: Yes.

Mr. Fusco: Were you asked to sign anything, did you make a statement to somebody that wrote these answers down?

Mr. Collett: We will object, if the Court please. There is no foundation laid as to time, place, persons to whom it was made, how it was made.

The Court: What was your question, Counsel?

Mr. Fusco: "Did you make a landing statement?"

The Court: When?

Mr. Fusco: "On the day that you arrived." [18]

The Court: What date was that?

Mr. Fusco: 1926.

The Court (To the Interpreter): Ask him if he made any statement.

A. Yes, I think I signed a paper, like that, aboard ship.

Mr. Fusco: I think that document is in the possession of the defendant. May that be introduced?

The Court: The document is available?

Mr. Collett: Yes, sir. He can offer the whole thing in evidence. Put the whole thing in evidence.

Mr. Fusco: No. No.

Mr. Collett: I want to introduce this landing statement. I want to introduce this landing statement and I want to ask——

(Testimony of Wong Hai.)

The Court: You want him to recognize some writing?

Mr. Fusco: Yes, your Honor.

The Court: Why don't you ask him?

Mr. Fusco: I will.

The Court: Speak out loud so the Reporter is able to hear you.

Mr. Fusco: I was just confused for a moment.

Mr. Collett: For counsel's benefit, he must refrain from asking the Interpreter to ask the witness a question. It should be directed to the Interpreter and for the Interpreter to interpret.

Mr. Fusco: Mr. Wong, will you look at this. Do you [19] recognize this document?

A. This was the paper I signed aboard ship.

The Court: Where did he sign it? Where did he sign this paper?

Mr. Collett: If the Court please, we might be of a little more assistance here, in order to know what we are talking about, and perhaps the Clerk might mark this for identification so we will have some basis of knowing what we are talking about.

The Court: Wait until he recognizes this. Ask him if the signature is there on that document?

A. Yes, my name is on that paper.

The Court: Very well. Let it be admitted for purposes of identification.

The Clerk: Plaintiff's Exhibit 1 marked for identification.

(Landing Statement of Wong Hai marked Plaintiff's Exhibit No. 1 for Identification.)

(Testimony of Wong Hai.)

Q. (By Mr. Fusco): On that statement did you say that you had any children?

Mr. Collett: Well, if the Court please, the statement speaks for itself.

Mr. Fusco: That is all.

The Court: What does the document indicate?

Mr. Fusco: It indicates that he does, your Honor.

The Court: Well, ask him about it. Ask him what you [20] have in mind.

Q. (By Mr. Fusco): Did you state that you had a son, and did you give the name of your son in that statement? A. Yes, I did.

Q. What name did you give?

A. Wong Gong Fay.

Q. Now I have here some documents. Do you recognize these documents?

The Court: Show them to him, counsel. Show them to counsel.

Mr. Fusco: The last time I did, he didn't want to see them.

Mr. Collett: Counsel, please——

The Court: We will take a recess so that counsel can familiarize themselves with these documents, whatever they may be.

(Recess taken.)

Mr. Collett: At this time I would like to ask counsel if he has any witnesses in the courtroom, other than the plaintiff, whom he expects to call.

The Court: You may ask him.

(Testimony of Wong Hai.)

Mr. Fusco: Yes, I do.

The Court: They will have to retire until they are called.

Is that what you have in mind? [21]

Mr. Collett: Yes, if the Court please.

Mr. Fusco: Has counsel examined the papers?

Mr. Collett: Yes.

Are you going to show them? Counsel, it might be helpful if you have the Clerk mark them for identification.

Mr. Fusco: May I have these marked for identification?

The Court: So marked.

Mr. Fusco: As a group.

Mr. Collett: Are you going to group them together? I suggest that your group them together.

Mr. Fusco: I think we will wait until they are described.

Mr. Collett: If the Court please, the only reason for my suggestion, it is helpful to know what is being described.

Mr. Fusco: These are school reports of the plaintiff.

The Court: Of whom?

Mr. Fusco: The plaintiff. The report cards of the plaintiff.

The Court: What does this witness know about them?

Mr. Fusco: Well, they were sent to the father, and I shall ask him if he recognizes them.

The Court: Very well, proceed.

(Testimony of Wong Hai.)

The Clerk: Plaintiff's Exhibits 2, 3, 4, 5 and 6, marked for Identification.

(Thereupon Chinese documents with English translations purporting to be report cards, marked for identification Plaintiff's Exhibits 2, 3, 4, 5 and 6.)

Q. (By Mr. Fusco): Mr. Wong Hai, I show these documents and ask you if you recognize them, and tell us what they are, if you know?

Mr. Collett: If the Court please, I don't understand the question. You say you offer him the documents?

Mr. Fusco: To tell us what they are.

The Court: He is trying to identify them.

Mr. Collett: Yes, I understand. I am trying to help him to identify them.

The Court: Ask him to examine them and state what they are if he knows.

A. This paper was issued by the section head to—that verifies the family.

The Court: Identify the document.

Mr. Collett: If the Court please, the witness has testified he was not in China at this time and there is no foundation laid as to what basis——

Mr. Fusco: I intend first to ask him, first to ask him to recognize them, and then I shall ask him if they came into his possession, or I can do it inversely. Maybe I could save time for the Court.

Q. (By Mr. Fusco): Did you receive any school

(Testimony of Wong Hai.)

reports from your son in China or from the school authority where your son [23] was attending?

A. Yes, these are the ones.

Q. Where your son was attending?

A. Yes, these are the ones. Like this. The report card here was sent to me from China.

The Court: Name the exhibit.

A. Exhibit 5.

Q. (By Mr. Fusco): How about the next one.

A. Exhibit 3, Exhibit 6—Exhibit 6 was issued in C.R. 34.

Mr. Fusco: I didn't ask him the question yet. Just one moment. Tell him not to answer any questions until I ask them.

A. Exhibit 4.

Q. (By Mr. Fusco): When did you receive them?

A. These were sent to me individually year after year while the boy was attending school.

Q. What boy? A. Wong Gong Fay.

Q. Did you make your income tax reports?

A. Yes.

Q. When did you make your first income tax report and what years did you file your income tax reports?

A. About the beginning of the war. It's been about ten years ago already. [24]

Q. Did you claim any exemptions?

A. Yes, I claimed two sons and one wife as my dependents.

(Testimony of Wong Hai.)

Q. Do you have those reports in which you claimed the sons?

A. I submitted them to the Immigration Service.

Mr. Fusco: May I ask the Court if the defendant will produce them, if they are available.

The Court: Are they available, counsel?

Mr. Collett: Yes. (Handing counsel.)

Mr. Fusco: I ask this be marked as plaintiff's exhibit, as a group, your Honor?

The Court: No objection?

Mr. Collett: You are offering those in evidence?

Mr. Fusco: As an exhibit.

The Court: Admitted and marked.

The Clerk: Plaintiff's Exhibit No. 7 marked for identification.

(Thereupon copies of income tax returns for 1942 and 1943, Wong Hai, marked Plaintiff's Exhibit 7 for Identification.)

The Court: For what years, counsel?

Mr. Fusco: This is for the year 1942, your Honor.

The Court: Is that the only one you have?

Mr. Fusco: Counsel, are there any more?

Mr. Collett: That's all we have. [25]

The Court: Admitted and marked next for identification.

Mr. Fusco: I ask you to look at this document and tell us what it is, if you know?

A. This is the income tax report.

Q. Was that signed by you? A. Yes.

(Testimony of Wong Hai.)

Q. What sons did you name?

A. Wong Gong Fay and Wong Kai Gong, and also Low Shee.

Mr. Collett: On this exhibit, if the Court please, I believe this is a copy of a return, and this is not the original. You have that in mind?

Mr. Fusco: Yes.

Mr. Collett: I mean it is his document which was presented.

Mr. Fusco: Then as a copy, I simply ask him if he recognized it, and he said he recognized it. That's all, your Honor.

That is all, your Honor.

The Court: Any questions, Counsel.

Mr. Collett: Well, if the Court please, at this time I would like to ask that the cross-examination of this witness be deferred until the entire case has been presented. I have requested in the last several cases that have been tried such procedure in order to see what proof there is.

The Court: We will proceed here in this case like we do [26] in every case.

Cross-examination.

Cross-Examination

By Mr. Collett:

Q. Do you have a birth certificate?

A. No. I was born in the country and they didn't have it in such times.

Q. You say they didn't have birth certificates

(Testimony of Wong Hai.)

in the State of California at the time you were born?

Mr. Fusco: Objection, your Honor.

A. I don't know about that. My mother didn't tell me about it.

Mr. Collett: What part of the country—you were born in Yreka, the city?

A. Yes. There was a Chinatown in that city.

Q. To your knowledge you have never seen a birth certificate regarding your birth?

A. No, I hadn't seen one. My mother didn't give me one.

Q. Did you go to school?

A. Yes, I have been to school for two years.

Q. Where did you go to school?

A. In the town of Yreka.

Q. And what year?

A. 1914 and 1915, I attended two years of schooling.

Q. You remember the name of the school?

A. No, I cannot remember now. [27]

Q. Do you recall whether or not there was any birth record given to the school at the time you attended school?

A. My mother took care of those matters. I didn't know.

Q. Where is your mother now?

A. She is in New York. I haven't heard from her for a long time.

Q. Do you have her address? A. No.

Q. When is the last time you heard from your mother?

(Testimony of Wong Hai.)

A. Ever since I returned from China, I have not received any letter from her.

Q. Where is your father?

A. He died a long time ago.

Q. What year? A. 1914.

Q. Where? A. In the town of Yreka.

Q. When did your mother go to New York?

A. After we brothers returned to China, she went to New York.

The Court: What year was that?

A. 1924. That was the year we went to China.

Mr. Collett: How long prior to your departure did she go to New York?

A. Right after we left for China. [28]

Q. How many brothers did you have?

A. I have four younger brothers and one sister.

Q. Were they all younger than yourself?

A. Yes, except my sister, who is older.

Q. Your sister is the oldest of the family?

A. Yes.

Q. Do you know when she was born?

A. 1899 she was born.

Q. 1899? A. Also in Yreka.

Q. Do you know whether or not there was a birth certificate of her birth?

A. I don't know about that.

Q. Who is the next oldest brother—when was he born? A. 1902.

Q. Do you know of any birth certificate as to his birth?

(Testimony of Wong Hai.)

A. I don't know of any birth certificates as to the birth of any of your brothers?

A. I don't know.

Q. Do you have a death certificate as to your father?

A. I only know when he died and I knew that his remains were sent to China.

Q. When? A. You mean when he died?

Q. No, when were the remains sent to [29] China?

A. My brothers took care of the matter. I don't know. It was shortly after his death, that he was shipped to China.

Q. Weren't you the oldest brother?

A. Yes.

Q. Wasn't that your responsibility to take care of that matter?

Mr. Fusco: May I interpose an objection at this time? I can't understand what relevancy—what counsel is trying to show. First I think that this is without the scope of the direct examination. And what bearing would that have, whether he knew—whether the plaintiff knew of the time—the birth certificate, the time of death, the birth certificates of the brothers at their tender ages? What bearing would that have, the relationship?

The Court: It goes to the credibility of the witness. I will allow it. Proceed.

Mr. Collett: Withdraw the question. Wasn't it your responsibility as the oldest brother to make

(Testimony of Wong Hai.)

arrangements for the shipping of the remains of your father?

A. I was only 10 years old and I didn't know how. My mother took care of the situation.

Q. Well, you just told us your younger brothers took care of it?

A. No, I didn't say it was my younger brothers who took care of it. [30]

Q. You didn't say that your younger brothers took care of it, is that right?

A. No, I didn't say that.

Q. You say it was your mother who took care of it? A. No, a distant relative or cousin.

Q. Well, who took care of the shipping of the remains of your father back to China?

A. Wong On.

Q. Who is Wong On? A. Cousin.

Q. Where is Wong On now?

A. I don't know where he is now. He used to be in the country.

Q. What do you mean by "in the country"?

A. Yreka.

Q. When did you last see Wong On?

A. I have not seen him for a long time. I have not seen him ever since I went to China.

Q. Prior to the time you left China, when was the last time you recall seeing him?

A. I can't quite remember now. I remember I had seen him in quite a few occasions before I went to China.

Q. When did you leave—that is, when did he

(Testimony of Wong Hai.)

leave Yreka? A. I don't know when he left.

Q. Where are your younger brothers now? [31]

A. Some in Seattle, some in Texas.

Q. Who is the one in Seattle?

A. The second one, named Wong Fun.

Q. The name is Wong Fun?

A. Wong Fun.

Q. How do you spell that?

The Interpreter: The closest I can get to it
F-o-n.

Q. (By Mr. Collett): What is his address?

A. He doesn't correspond with me. I only know
he is there.

Q. How do you know he is there?

A. His friends told me, and his friends told me
he is now blind.

Q. Which friend?

A. I don't know; some Wongs and some Lees.

Q. What was the name of the friend that told
you he was blind?

A. A person of the Lok family told me about
that. He came out from the country.

Q. A person of which family? A. Lok.

Q. How do you spell that?

The Interpreter: L-o-k.

Mr. Collett: Didn't you just tell us somebody
in the Wong or the Lee family?

A. I mean Lee Lok. [32]

Mr. Collett: Mr. Interpreter, how would you
spell that?

The Interpreter: L-e-e L-o-k.

(Testimony of Wong Hai.)

Q. (By Mr. Collett): Is that a person, Lee Lok?
A. Yes.

Q. Where is Lee Lok?

A. He is over there in that town. I haven't seen him for a long time. He only comes out once every two or three years.

Q. In what town? A. In Seattle.

Q. When is the last time he came out?

A. I can't quite remember what year it was. It must have been about two to three years ago.

Q. Where is your other brother?

A. Some in Texas.

Q. In Texas. What is his address?

A. I do not have their addresses. When we came back from China they told me they were going to Texas. That's all.

Q. You have not heard from him since you came back from China?
A. I have not.

Q. How do you know he's in Texas?

A. I don't know. They told me before they were going to Texas.

Q. What is the name of the brother that you say is in Texas? [33]
A. Wong Hem.

Q. Where is your sister?

A. In New York.

Q. What is her address?

A. I don't have her address. I have not heard from her.

Q. When is the last time you heard from her?

A. Ever since I returned from China I have not heard from her.

(Testimony of Wong Hai.)

Q. How do you know she is in New York?

A. She was in New York. That is how I know

Q. Is that before you went back to China?

A. Yes.

Q. Wong Hem is the third oldest brother, is that correct?

A. No, Wong Hem is the oldest brother.

Q. What is the name of the next youngest?

A. Wong Suey.

Q. Where is Wong Suey?

A. I don't know where he is now. Last year he was in Oakland.

Q. What was his address in Oakland last year?

A. I don't know. He didn't tell me what the address was he was residing at, but he told me it was near Chinatown.

Q. When did you see him last?

A. Sometime last year, I cannot remember the exact month now. [34]

Q. Where?

A. He came to the store and saw me.

Q. When is the next time prior to that that you saw him?

A. I didn't see him. He only came to see me.

Q. You didn't see him then when he came to see you, do I understand that correctly?

A. Maybe I was not in the store. If that was the case, he couldn't possibly see me. He can only see me when I was in the store.

Q. When did you leave Yreka? A. 1924.

Q. We have had your youngest, next oldest.

(Testimony of Wong Hai.)

What is the name of the third oldest brother?

A. Wong Ng.

Q. How do you spell that?

The Interpreter: N-g.

Q. (By Mr. Collett): What was the date of his birth? A. 1903.

Q. Where is he?

A. I haven't seen him for quite a few years. I don't know where he is now.

Q. When did you see him last?

A. About four to five years ago.

Mr. Collett: Is that four or five, Mr. Interpreter?

The Interpreter: Yes. [35]

Q. By Mr. Collett: Do you remember the year?

A. I cannot remember.

Q. Where?

A. I think he came to the store to see me.

Q. Where was he living then?

A. He went back and forth. He was residing in a hotel.

Q. Where?

A. I don't know. He didn't tell me.

Q. You state you went to China in 1924?

A. Yes.

Q. Do you recall the month?

A. Yes, that was the 12th month, December, that was.

Q. Who went with you?

A. All my brothers.

Q. All your borthers went with you at the same

(Testimony of Wong Hai.)

time and on the same boat? A. Yes.

Q. What was the employment of your father during the time that he was alive, if you know?

A. He was a gold miner.

Q. After his death, who supported your family?

A. My mother.

Q. Was she employed?

A. No, she didn't work.

Q. How did your father die? [36]

A. He died from some sort of illness.

Q. How do you know—do you know how your mother received money to support her family after your father's death?

A. My father probably left her some money.

Q. You say probably, do you know for certain whether or not there was any money?

A. No, I do not know.

Q. Do you know whether or not there was any estate that went into Court up in Yreka or any town nearby?

Do you understand that question?

Ask him. You translate it and see if he understands it. A. No.

Mr. Collett: Does he understand what I mean?

A. You probably mean whether my mother was able to claim some support from the Government?

Q. No. I don't mean that.

The Court: That wasn't the fashion in those days, was it?

Mr. Collett: No.

The Court: All right, let's proceed.

(Testimony of Wong Hai.)

Q. (By Mr. Collett): Do you know whether or not your mother had to go to Court with regard to any money that your father may have left?

A. No, I didn't see such actions.

Q. Did you work during the time you were at Yreka? [37]

A. Yes, I worked in the restaurant.

Q. When did you first go to work?

A. I must have been about 20 years old. I do not remember exactly, but since my father died I knew that I had to work.

The Court: How old was he when his father died?

A. 12 or 13 years old.

Mr. Collett: Your father died, you say, in 1914. You were born in 1901. You say you went to work when you were 20 years old?

A. About 20 years old.

Q. Do you recall for whom you worked?

A. I worked for the Royal restaurant.

Q. For whom? I didn't understand.

A. Royal. The restaurant, the Chinese call Loy Lou, which was owned by Wong On.

Mr. Collett: How is that spelled.

The Interpreter: L-o-w L-o-o.

Mr. Collett: Was that the name of the restaurant, the Low Loo Restaurant? A. Yes.

Q. Where was it located? A. In Yreka.

Q. The name of the operator of the restaurant was Wong On? A. Wong On.

The Court: We will take the adjournment until two.

(Thereupon a recess was taken until 2:00 o'clock p.m.) [38]

Thursday, May 7, 1953—2:00 P.M.

WONG HAI

called as a witness on behalf of the plaintiff, resumed the stand and testified further as follows:

Cross-Examination
(Resumed)

By Mr. Collett:

Q. When did you come to San Francisco from your trip to China in 1924?

A. The end of the year. I was in San Francisco for a short time before I went to China.

Q. How long a time were you in San Francisco before you left for China?

A. About a month or so.

Q. Prior to the time of his death, was your father engaged in mining up to immediately before the time that he died?

A. No, he was too old to mine then. He was 70 odd years old.

Q. 70 years old at the time he died? When did he stop mining?

A. I was too small to remember that.

Q. Then you only knew about his mining because somebody told you, is that right?

A. My mother told me.

Q. What was your father's ancestral village?

(Testimony of Wong Hai.)

A. Nom Hon Section of Toi Shan district. [39]

Q. Nom Hon Section. How do you distinguish that from a village, a section from a village, what is the difference?

A. A village is like a section, and a section is somewhat like a village.

Q. Is the section the same thing as a village?

A. Yes. In our part of the country we call a section. A section is a village.

Q. You left San Francisco about December 28th, 1924, on your way to China, is that right?

A. Yes.

Q. And you say your four brothers were with you? A. Yes.

Q. Where did you arrive in China?

A. I went to Toi Shan City.

Q. No. Where did the ship land in China? Where did you get off the ship in China?

A. In Hong Kong.

Q. Did it stop anywhere between San Francisco and Hong Kong? A. Only at Japan.

Q. It stopped at Japan. What vessel was it?

A. The Lincoln.

Q. How long did it take to get to Hong Kong?

A. It took 28 days to a month in those old days.

Q. After you arrived in Hong Kong, where did you go?

A. I went to Toi Shan District. [40]

Q. Well, did you stay in Hong Kong at all?

A. Yes, only for a few days.

(Testimony of Wong Hai.)

Q. Where is Toi Shan District from Hong Kong?

A. It takes about a day or so to travel from Hong Kong to Toi Shan District.

Q. And how long did it take you to get there?

A. In the old days I took a boat to Gong Won, and then from there by train.

Q. You say you took a ship to where?

A. Bot Goi.

Q. Bot Goi was that? A. Yes.

Q. Did you go to Canton? A. No.

Q. Could you tell us where Bot Goi is from Hong Kong?

A. It took about an overnight traveling by ship for ten hours.

Q. And from Bot Goi you say you took a train?

A. Yes.

Q. And where did you get off the train?

A. At Toi Shan City.

Q. Why did you go to Toi Shan City?

A. That's where the train stopped before I can go to my village.

Q. Then you got off the train at Toi Shan City and from there [41] you went to the village. Which direction is the village from Toi Shan City?

A. About eight lis from Toi Shan City.

Mr. Collett: And, Mr. Interpreter, a Lis is what?
The Interpreter: A third of a mile.

Mr. Collett: Do you recall which direction the village is eight lis from Toi Shan City?

A. East of Toi Shan City.

(Testimony of Wong Hai.)

Q. Who was there in the village? You say that is Nom Hung?

Mr. Interpreter, how do you spell that?

The Interpreter: N-o-m H-u-n-g.

Q. (By Mr. Collett): Who was there in Nom Hung village that you knew?

A. I can't remember now. I heard that there were some relatives there, but not too closely related.

Q. When did you hear that?

A. My mother told me and she told me to go down there for a visit.

Q. Well, where did your brothers go?

A. They also went there.

Q. You were all together at the same place?

A. Yes.

Q. And do you recall where you went, the name of the people to whom you went first when you first arrived at the village?

A. It's been such a long time I cannot remember the particular [42] name, especially when I was only there for a short visit.

Q. Then where did you go?

A. Then I returned to Toi Shan City.

Q. Where did you go in Toi Shan City?

A. I rented a house on Main Street.

Q. Why did you go to Toi Shan City?

A. Because I was residing there.

Q. Well, you just arrived. You hadn't been residing there. Why did you go to Toi Shan City to reside?

(Testimony of Wong Hai.)

A. That is the place where I was going and I lived there.

Q. Why is that the place that you were going?

A. My mother told me to go to Toi Shan City and get married. That's why I lived there.

Q. Your brothers were still with you?

A. Were with me where? You mean living in Toi Shan City?

Q. Yes. Were your brothers with you in Toi Shan City? A. Yes.

Q. Did they live with you all the time you were in Toi Shan City?

A. Yes, we were living together.

Q. The entire time you were in China?

A. No. Some moved away because they liked other places.

Q. You say some moved away. Well, now, we will take Wong Hem. When did he move away?

A. I cannot remember now. [43]

Q. Why did they like other places?

A. He didn't like to live together. Therefore, he wanted to move away.

Q. Where did he go?

A. Somewhere in Toi Shan City.

Q. Wong Suey, when did he leave?

A. I cannot remember now. They got married and moved away.

Q. You say he got married, Wong Suey got married? A. Yes.

Q. When? A. You mean Wong Suey?

Q. That is what I said.

(Testimony of Wong Hai.)

A. About the third month—I'm not so sure.

Q. He moved away, too, did he? A. Yes.

Q. Wong Ng, the third brother, when did he move away?

A. Wong Ng—I cannot remember that.

Q. Did he move away?

A. He also moved away after they were married.

Q. Where did he go?

A. He was also in Toi Shan City.

Q. Do you remember where?

A. Some lived in Tfi On See—the west part of Toi Shan City. I really cannot remember what address.

Q. Did Wong Ng get married? [44]

A. Yes.

Q. Did Wong Fun move away?

A. Yes, he was married and move away.

Q. Where did he go?

A. Also in Toi Shan City.

Q. You returned to the United States from China December the 18th, 1926, is that correct?

A. Yes.

Q. Did you come back by yourself?

A. Yes.

Q. You say you were married on February 2, 1925, is that the date? A. Yes, 1925.

Q. Who arranged for the marriage?

A. Nobody actually did. The neighbors suggested that I should get married and helped me.

Q. Well, you stated that you left the United States on December the 28th, 1924, and it took you,

(Testimony of Wong Hai.)

so you stated, something like 28 days to get to Hong Kong. When did you arrive in Toi Shan City?

A. I arrived there on the 12th month, the Chinese reckoning—that was during the Chinese New Year season.

Q. What year and month?

A. The last part of December, 1924, or January, 1925.

Q. Well, as I understand it, you left the United States on [45] December the 28th, 1924, that is correct, is it not? A. Yes.

Q. How long after you arrived in Toi Shan City did you get married?

A. About two to three weeks.

Q. Are you sure of that? A. Yes.

Q. Are you sure that February the 2nd, 1925, is the date of your marriage?

A. February 2?

Q. Yes? A. Yes.

Q. You didn't arrive in Toi Shan City until the 8th of February, 1925, isn't that so?

A. No. It was in the 12th month, Chinese reckoning. I remember I was there for a short time before Chinese New Year.

Q. What was Chinese New Year in 1925?

A. When I left San Francisco it was only 11th month of Chinese reckoning.

Mr. Collett: Did you get that, Mr. Interpreter, when was the Chinese New Years in 1925?

The Interpreter: January the 24th, 1925.

Mr. Collett: What was it?

(Testimony of Wong Hai.)

The Interpreter: January 24th, 1925.

Mr. Collett: Excuse me. Excuse me. The last day of [46] C.R. 13, which is 1924, equivalent to Western reckoning is January 23, 1924—No, '25. January, 1925.

Mr. Collett: Mark this for identification.

The Clerk: Defendant's Exhibit A marked for identification.

(Document headed U. S. Dept. of Labor, Immigration Service, May 9, 1924, marked Government's Exhibit A for identification.)

Q. (By Mr. Collett): I will show you Exhibit A——

Mr. Fusco: Counsel——

Mr. Collett: There is no question, is there, Counsel? He departed on——

Mr. Fusco: I just wanted to see that.

Mr. Collett: Will you stipulate he departed on December 27, 1924?

Mr. Fusco: I won't stipulate to anything. I want to see that.

Mr. Collett: Very well.

Q. (By Mr. Collett): I will show you Government Exhibit A. That's your photograph, is it not?

A. Yes.

Q. And you recall that document?

A. No, I don't remember what it was for. Could it be the document that I used on the ship?

Q. Yes, it is—this is your signature, is it not, appearing on the document? [47]

(Testimony of Wong Hai.)

A. Yes, and also the photograph.

Q. That shows that you departed San Francisco in accordance with your intention to leave the United States on December the 27th, 1924.

Does that help your recollection? A. Yes.

Mr. Collett: I ask that it be admitted into evidence.

The Court: Admitted and marked.

The Clerk: Government's Exhibit A heretofore marked for identification admitted and filed in evidence.

(Thereupon document previously marked A for identification received and marked in evidence as Government's Exhibit A.)

Q. (By Mr. Collett): If you left the United States on December 27th, 1924, and your testimony is that it took 28 some odd days to get to Hong Kong and two or three weeks after you arrived in Toi Shan Village before you were married, what was the correct date of your marriage?

Mr. Fusco: I ask the Interpreter to translate the substance of that conversation. Translate the conversation.

The Court: What was it he said?

The Interpreter: Oh, he said: "I left the United States on the 11th month of Chinese reckoning and I was married on the 7th, first month, 10th day, Chinese reckoning, C.R. 14.

Mr. Collett: What is that in terms of our calendar?

(Testimony of Wong Hai.)

The Interpreter: Our calendar—the date of departure [48] from San Francisco should be recorded as December 24, 1924. The date of his marriage should be February 2, 1925.

Mr. Collett: How long did you say he stayed in Nom Hung Village after you arrived there?

A. Not very long. Just one day.

Q. Do you understand that in accordance with the Government Exhibit A that your ship departed from the United States on December 27, 1924?

A. Yes.

Mr. Collett: Would you translate that into the Chinese equivalent, the date.

The Interpreter: December 27th. You want it in English?

Mr. Collett: I want you to translate that American date into C.R. date, so I am sure that he knows what I am talking about in terms of Chinese.

A. It couldn't be on the 12th month. It must be on the 11th month.

Mr. Collett: Why must it be on the 11th month?

A. I don't know. I can only remember the American reckoning which was on December 27th.

Q. December 27th. Now you are quite sure your recollection is that it took at least 28 days to get to Hong Kong?

A. Yes.

Mr. Collett: Will you translate the Chinese for me, the C.R. date, representing the date January the 26, 1925? [49]

The Interpreter: C.R. 14, first month, 3—

Mr. Collett: C.R. 14, 1, 3?

(Testimony of Wong Hai.)

The Interpreter: Yes, sir.

Q. (By Mr. Collett): Do you recall your arrival in Hong Kong as being about C.R. 14, 1, 3?

A. You mean Western reckoning?

Mr. Collett: Mr. Interpreter, I have endeavored to accomplish from you the Chinese reckoning for the date January the 26, 1925. I don't know it myself. If you will just simply translate that into the Chinese reckoning.

The Interpreter: January 26, 1925.

A. Is the first date of the C.R. 14—

Mr. Collett: That is one, C.R. one, three, one, four, is that correct?

The Interpreter: C.R. 14, 1, 3.

Mr. Collett: C.R. 14, 1, 3—now is it your recollection that you arrived in Hong Kong on about C.R. 14, 1, 3?

A. I can't quite remember now.

Q. How many days after you arrived in Hong Kong did you reach Toi Shan Village?

A. Just one day.

Q. Well, you stopped one day and then—that is, at Nom Hung Village, and how many days was it before you took up residence in Toi Shan [50] City?

A. After I arrived at Toi Shan City and went to Nom Hung Village for one day, I went back to Toi Shan City and lived there.

Q. Did you work while you were in Toi Shan City?

A. No.

Q. Where did you get the money to support yourself in Toi Shan City?

(Testimony of Wong Hai.)

A. I had some money with me.

Q. Where did you get that money?

A. I saved it up from working.

Q. Did you work at any time while you were in China? A. No.

Q. What is the date of your birth?

A. 1901.

Q. What month and what year?

A. First month, tenth day, Chinese Reckoning.

Q. What would be the full equivalent in Chinese Reckoning for that year, month and date?

The Interpreter: February 28, 1901.

Mr. Collett: And that is C.R. or K.S.?

The Interpreter: K.S. 27.

Mr. Collett: K.S. 27. What is the rest of it?

The Interpreter: K.S. 27, 1, 10.

Mr. Collett: What is the equivalent of Chinese Reckoning of February 2, 1925? [51]

The Interpreter: February 22, 1925?

Mr. Collett: Yes.

The Interpreter: C.R. 14, 1, 30.

Mr. Collett: February 2, 1925, you say February 2 is——

The Interpreter: C.R. 14, 1, 30.

Mr. Collett: What is the Chinese Reckoning of your marriage date?

A. First month, tenth day.

Q. That is C.R. then. What year? C.R. 14, 1, 10, is that correct? A. Yes.

Q. C.R. 14, 1, 10, what is the equivalent of that in the American calendar?

(Testimony of Wong Hai.)

The Interpreter: February 2, 1925.

Mr. Collett: You were in error then, Mr. Interpreter, when you said it was 1, 30?

The Interpreter: You asked for February 22, 1925.

Mr. Collett: No; I tried to make it clear, February 2. I said second, February 2nd, 1925.

The Interpreter: 14, 1, 10, and his birthdate is 27, 1, 10.

Mr. Collett: Is there any relationship between the 27, 1, 10, and 14, 1, 10—is that a matter of assistance to your memory?

The Interpreter: Repeat that. [52]

Mr. Collett: Is there any relationship between the two dates, 27, 1, 10 and 14, 1, 10, is that of assistance to your memory?

The Court: I can't quite understand that question myself.

Mr. Collett: Well, 1, 10——

The Court: This is your witness. Ask him directly. Cut down your question so that there is no question about it.

Mr. Collett: Well, withdraw the question.

Q. (By Mr. Collett): You testified that this marriage was on a written agreement, is that correct?

A. I did not say the marriage was recorded or in words. What I meant was that a three generation paper was signed.

Q. Do you have that paper?

A. No, I did not bring one from China.

(Testimony of Wong Hai.)

Q. Where is it? A. What, the paper?

Q. The paper I just asked you about, that you testified to.

A. I left it in China. I did not bring it with me.

Q. Where is it?

A. I cannot remember now. It's been such a long time.

Q. You say the marriage was arranged by the neighbors? A. Yes.

Q. Who were the neighbors?

A. I cannot remember the name now. [53]

Q. You stated the marriage was by ceremony, was that correct? A. Yes.

Q. Where was the ceremony performed?

A. At a house where we lived in Toi Shan City.

Q. Were your brothers present?

A. Yes, they were there.

Q. In 1942 you filed an individual tax return, which appears as plaintiff's Exhibit No. 7, and you list two names as sons.

During the year 1942 how much did you contribute to the support of these two individuals that you have named as sons?

A. A few hundred dollars.

Q. A few hundred dollars. Do you have any receipts?

A. No, I do not have it now. I lost them all.

Q. When did you lose them?

A. They weren't of any use to me. I don't know where I put them.

Q. How did you send money to China in 1942?

(Testimony of Wong Hai.)

A. At that time I couldn't send my money because it was war time.

Q. Then you did not send any money to China in 1942, is that right?

A. It was because of the war. I cannot send money there then, and therefore I did not send any. [54]

Q. Then your previous answer "few hundred dollars" was not correct, is that right?

A. I thought you meant how much money I sent each year in those old days.

Q. On Plaintiff's Exhibit No. 7 you claim a deduction of \$385 for each dependent, or a total of \$770. That is correct, is it not?

A. That was the report I submitted.

Q. In 1942?

A. I couldn't help it if I couldn't send any money to China in those days.

Q. How much money did you send to China in 1943 for the support of your—withdraw that.

In 1943, according to Plaintiff's Exhibit No. 7, you listed as dependents 3 names, Wong Fay Kong, Wong Kai Kong, and Lou Shee.

The two you claimed as sons and the third you claim as wife.

How much did you send to China in 1943?

A. I didn't send any money. I wasn't able to because of the war.

Q. You claimed a deduction of \$1,155 for dependents in 1943, is that right?

A. I just couldn't send any money home.

(Testimony of Wong Hai.)

Q. Did you file an income tax return in [55] 1944? A. Yes, I did.

Q. Did you claim any dependents in 1944?

A. I only claimed the younger son and my wife because my older boy was of age.

Q. Do you have any receipts of any kind showing the transmission of money to China at any time since 1926?

Mr. Fusco: Asked and answered, your Honor.

The Court: He may answer. Objection overruled.

A. No, I did not keep that.

Mr. Collett: You have testified that there were two children that were born. The second son was born after you returned to the United States.

How did you know that the second son was born?

A. I received a letter from my home. They told me so.

Q. From whom? A. My wife.

Q. When?

A. It was after the birth of the child. I cannot remember exactly when now.

Q. What year?

A. It was either in 1926 or '27—in C.R. 16.

Q. Do you have the letter? A. No.

Q. Do you have any correspondence received from your alleged wife? [56]

A. No, I do not keep them.

Q. I am referring to at any time since 1926 to date, do you have any correspondence, any letter received from your wife? A. I received some.

Q. The question is, do you have a letter, any let-

(Testimony of Wong Hai.)

ter received from your wife from 1926 to right now? A. No.

Q. Referring to Plaintiff's Exhibits for Identification 3, 4, 5 and 6, do you recall these papers?

A. Yes.

Mr. Collett: Counsel, I take it the paper attached to it is the English translation of the contents.

Don't you know?

Mr. Fusco: I do know. I do know.

The Court: To your knowledge it is an accurate translation?

Mr. Fusco: Yes, your Honor.

Mr. Collett: Referring to Exhibit 3 for Identification, it states, "C.R. 33—6-22, August 10, 1944."

When did you come into possession of this document?

A. It has been a long time ago. I cannot remember now.

Q. How long ago?

A. He finished school quite some time ago. I cannot remember exactly what year that was. I do not remember. [57]

Q. Did you have this in 1951?

The Interpreter: Forty what?

Mr. Collett: 1951.

A. 1951. That must be about—maybe about that time that he sent me.

Q. Well, do you remember whether or not you had it in 1951?

A. About that time, I can't remember exactly.

Q. How did you receive it?

(Testimony of Wong Hai.)

A. The Immigration Officer told me to get those report cards in order to present them as evidence, and in the aid to that I wrote home and sent for them.

Q. Oh, you wrote to whom?

A. I wrote home to my wife, told her to find those documents.

Q. Did she send it to you? A. Yes.

Q. In the letter? A. Yes.

Q. Do you have the letter?

A. No, the report cards were sent to me without any letter.

Q. Do you have the envelope?

A. I don't know where I placed them now.

Q. Did you ever show this document to the Immigration officials? A. No, I didn't. [58]

Q. Why not? A. They didn't ask me.

Q. You stated that they asked you to get it?

A. They asked for it, but I didn't have it. How can I present it when I don't have it?

Q. Why didn't you present it after you got it?

A. I don't know whether I was supposed to submit them. I just turned them over to my attorney.

Q. When? A. I cannot remember now.

Q. How soon after the Immigration said to you to get the so-called reports did you receive these documents? A. A few months.

Q. What year was it? A. 1951.

Q. This Exhibit 3 has the date of August 10, 1944. You did not receive it in 1944, that's correct, isn't it?

(Testimony of Wong Hai.)

Mr. Fusco: Your Honor, I object to that. Plaintiff has already answered that question and has already stated that——

The Court: What question?

Mr. Fusco: That they were all received after 1951.

Mr. Collett: No, no, he hasn't stated anything like that. [59]

The Court: Proceed.

Q. (By Mr. Collett): Plaintiff's Exhibit 3, do you understand what I mean by Plaintiff's Exhibit 3?

The Court: Show it to him and ask him if he ever saw it before.

Mr. Collett: He has testified, if the Court please——

Q. (By Mr. Collett): You did not receive this document which is entitled Plaintiff's Exhibit 3 in August, 1944? A. No.

Q. You said you received that in 1951?

A. Yes.

Q. Referring now to Plaintiff's Exhibit 4, when did you receive this?

A. It was not sent to me individually. It was sent all together at one time in 1951.

The Court: We will take a recess.

(Short recess taken.)

Q. (By Mr. Collett): It is your testimony that these documents which have been identified as Plaintiff's 3, 4, 5 and 6, these school reports, were all

(Testimony of Wong Hai.)

received at the same time, is that correct?

A. Yes.

Q. And you say that that was some time in 1951?

A. About that time. I cannot quite remember now.

Q. At no time were they shown to the officials of [60] immigration? A. No.

Q. You told us this morning that you had received them individually year after year while the boy was attending school. That isn't true, is it?

A. Not year after year. They were all sent to me at one time.

Q. Well, you told us this morning that they were received year after year.

A. I didn't say that. I said it was sent to me at one time.

Q. Was that your recollection of your testimony this morning?

A. I think that is what I said this morning, that I think they were sent all together to me.

Q. The truth is, they were not received one at a time individually while the boy was at school, that is not true, is it?

A. I didn't say that those were sent to me individually one by one each year.

Q. Well, it is not true they were received one by one each year? A. Yes.

Q. Did they all come to you in the same envelope? A. Yes. [61]

(Testimony of Wong Hai.)

Q. Are you sure that you received them from China? A. Yes.

Q. You don't have the envelope in which they were sent to you? A. I don't have it now.

Q. At the time that Wong Gong Fay was, you claim he was born, where were your brothers?

A. They were in Toi Shan City.

Q. Were they present at the time of the birth?

A. No.

Q. Did they see the child at any time prior to your departure from China?

A. I don't know whether they did or not.

Q. When did you leave Hong Kong returning to the United States? A. 1926.

Q. Do you recall the month that you left Hong Kong?

A. I arrived at San Francisco on December 15. I left Hong Kong in November. Chinese reckoning should be the tenth month.

Q. When did you leave Toi Shan City?

A. The ninth or tenth month, Chinese reckoning.

Q. Ninth or tenth month.

Give us the complete date so we can translate it.

A. October, November, December. [62]

Mr. Collett: I didn't understand that.

The Interpreter: Ninth month, first day, was the 7th of October, 1926. The last day of 11th month of C.R. 15 is January 3, 1927.

Mr. Collett: What is the 1927 date?

The Interpreter: The last day of the 11th month of C.R. 15 was January 27—January 3, 1927.

(Testimony of Wong Hai.)

Mr. Collett: What happened on January 3, 1927?

The Interpreter: How do you mean, sir?

Mr. Collett: Perhaps we got a little confused. You came up with a date in 1927. You got him arriving December, 1926, and I think he used the ninth and tenth month—ninth and tenth month, and I was endeavoring to find out what the ninth and tenth month——

The Interpreter: Oh, the ninth and tenth month, you want? C.R. 15 was October 7, 1926. The last day of the tenth month of C.R. 15 was December 4, 1926.

The Court: He wants to know what happened on that day.

Mr. Collett: No. I will withdraw that, if the Court please. We got into January the 3rd, and I didn't know what happened on January the 3rd. That's why I asked.

C.R. 15—let's get this straight—C.R. 15, ten, tenth month, is October the 27?

The Interpreter: Would you like to get the equivalent [63] of the tenth month from the last day to the first day?

Mr. Collett: Strike it.

Give me the Chinese calendar date for the time of your departure from Toi Shan City?

A. About the ninth or tenth month of C.R. 15.

Q. What is that in the American calendar?

A. That is the day I left the village?

Mr. Collett: That's the date.

The Interpreter: He left Toi Shan City——

(Testimony of Wong Hai.)

Mr. Collett: It's the ninth or tenth month of C.R. 15. Now I am trying to get the equivalent of——

The Interpreter: The first day of the ninth month, C.R. 15, was October 7, 1926. The last day of the tenth month of C.R. 15 was December 4, 1926.

Mr. Collett: In other words, you are telling us that it was between October the 7th and December the 4th of 1926? A. Yes.

Q. How long did you stay in Hong Kong prior to the departure of the ship?

A. A few weeks, about three or so. About three weeks.

Q. And do you recall how long the trip was from Hong Kong to San Francisco?

A. A little over three weeks.

Mr. Collett: That is all.

Mr. Fusco: Just one more question. [64]

The Court: What's that?

Mr. Fusco: Just one more question that I want to ask him.

The Court: All right.

Redirect Examination

By Mr. Fusco:

Q. Do you have a certificate of identity?

A. Yes.

Mr. Fusco: May we have it, please?

(Document produced by counsel.)

(Testimony of Wong Hai.)

Mr. Fusco: Do you recognize that?

A. Yes.

Mr. Fusco: May I enter this as an exhibit?

The Court: What is that?

Mr. Fusco: That is a certificate of identity.

The Court: What is the basis of it? What is the foundation? Where did it come from? Tell us all about it.

Mr. Fusco: Beg your pardon. Yes, your Honor.

Mr. Fusco: Mr. Wong Hai, when did you receive this?

A. Soon after I returned from Hong Kong.

Q. And it was given to you by whom?

A. I don't exactly know. It must have been the Immigration Service.

Mr. Fusco: That is all.

The Court: Are you offering this in evidence?

Mr. Fusco: Yes, I am. [65]

The Court: It will be admitted and marked.

Mr. Fusco: That is all, your Honor, of this witness.

The Clerk: Plaintiff's Exhibit 8 admitted and filed in evidence.

(Thereupon Certificate of Identity, Wong Hai, admitted and marked in evidence as Plaintiff's Exhibit 8.)

(Witness excused.)

Mr. Fusco: Our next witness will be Wong Gong Fay, the plaintiff.

WONG GONG FAY

plaintiff herein, called on his own behalf, sworn through the Interpreter, testified as follows:

(The following questions and answers were through the Interpreter.)

The Court: Ask him his full name, please.

A. Wong Gong Fay.

The Court: Where do you live?

A. Now?

The Court: Yes.

A. In Sacramento.

The Court: What is his business or occupation?

A. I work in a laundry for a friend.

The Court: Was he here in Court this [66] morning?

A. No, he is not here. He is in Sacramento.

The Court: This morning?

A. No.

The Court: I thought the witness was in Court this morning.

Mr. Fusco: Oh, pardon me, I thought you meant the friend. His friend.

The Court: Or why didn't he remain outside the courtroom when he was ordered to?

Mr. Collett: This is the plaintiff.

The Court: I thought he was a witness.

Mr. Collett: No.

Mr. Fusco: No.

Mr. Collett: May we at this time ascertain any familiarity with the English language?

(Testimony of Wong Gong Fay.)

The Court: Ask him how long he has been in this country.

A. About two years.

The Court: Where did you come from?

A. Hong Kong.

The Court: And did he go to school in Hong Kong?

A. No, sir.

The Court: Have you talked to this witness?

Mr. Fusco: Yes, your Honor.

The Court: Does he understand English?

Mr. Fusco: I have had to converse with him through an [67] interpreter. I find his English is very bad.

The Court: Proceed.

Direct Examination

By Mr. Fusco:

Q. What is your full name?

A. Wong Gong Fay.

Q. What is your age? A. 28 years old.

Q. Where were you born? A. In China.

Q. What city? A. Toi Shan City.

Q. What was the date of your birth?

A. Date of birth?

The Interpreter: Yes.

A. C.R. 15.

Mr. Fusco: Do you have any birth certificates or documents giving evidence of your birth?

A. No. In China we don't have it.

(Testimony of Wong Gong Fay.)

Q. How do you know your age?

A. I don't know about my age. I ought to know my own age.

The Court: How does he know his age?

A. I remember it.

Mr. Fusco: Who told you?

A. Because at the present time I do not have to know. I do not have to have somebody tell me how old I am. I can [68] calculate that myself. But, of course, when I was young, my mother told me how old I was.

Q. Do you have any brothers or sisters?

A. Including myself, I have two brothers.

Q. What is your mother's name?

A. My mother?

Q. Yes.

A. I heard her name was Chin Gum.

Q. You don't call your mother by name, do you?

A. No.

Q. What is your brother's name?

A. Kai Gong.

Q. When did you first learn the name of your brother?

A. When I was young, I didn't know. I found out when I was mature.

Q. Do you know you know your father's father, his name? A. Lee Dun Nu.

Q. Did you know your mother's mother or know her name? A. No.

Q. Did you ever see them?

A. When I was young, I did.

(Testimony of Wong Gong Fay.)

Q. Are they living or dead?

A. Now, at the present time? Who do you refer to?

Q. Your mother's mother and your mother's father? A. Both together or—— [69]

Q. Well—one at a time.

A. My maternal grandmother is alive and my maternal grandfather is dead.

Q. Do you know if your father has any brothers or sisters?

Mr. Collett: I object to that question, if the Court please, because it calls for purely hearsay.

The Court: If he knows, that's the question.

Mr. Fusco: That's all. That's all.

Q. (By Mr. Fusco): Have you ever seen them?

A. No.

Q. Did you ever see your father in China?

A. You mean my own father?

Q. Yes.

A. When I was born, he was in China, but I didn't know any better.

Q. When did you see your father the first time?

Mr. Collett: I understood, if the Court please—there is an objection to the use of the term "father." That is purely hearsay, as far as this witness is concerned.

The Court: The objection will be sustained. Proceed.

Mr. Fusco: When did you see Wong Hai the first time? A. Where, do you mean?

(Testimony of Wong Gong Fay.)

Q. Where and when did you see him the first time?

A. When I was young, after my birth. I was too young to know, but I saw him when I came to the United States. [70]

Q. Did you go to school?

A. You mean here or elsewhere?

Q. Did you ever go to school?

A. Yes, I attended Chinese schools.

Q. Where did you go to school?

A. In the village next to mine.

Q. I ask you to look at these documents. Do you recognize them? A. Yes.

Q. What are they?

A. These are report cards from school.

Q. Whose are they? Do you recognize the signatures or the writing, the Chinese writing, what does that purport to be?

Mr. Collett: Object to the question; what it purports to be. The documents speak for themselves.

The Court: If he knows. I don't know what they are.

A. These characters are here in the case where I was born and where I lived.

Mr. Fusco: When did you leave Toi Shan the last time?

A. You mean the time when I left there to come to the United States?

Q. Yes. A. In C.R. 35.

Q. Who sent you the money for your voyage?

Mr. Collett: I object, if the Court please, who

(Testimony of Wong Gong Fay.)

sent [71] the money. No proper foundation laid.

Mr. Fusco: I am just asking how he got his passage. I can reframe my question. I just want to ask the source.

The Court: I will overrule the objection. Ask him.

A. My father.

Mr. Fusco: That is all, your Honor.

Mr. Collett: Well, I will ask that that answer be stricken, if the Court please, by the previous ruling of the Court, saying that his father sent him is no foundation laid whatsoever for it.

The Court: What foundation have you in mind?

Mr. Collett: That is, who sent the money.

The Court: He said his father.

Mr. Collett: But he is again testifying with regard to his father.

The Court: He calls him his father.

Mr. Collett: But the proper showing would be the receipt of something in Chinese.

The Court: You can cross-examine him on that. I don't know whether he has got a receipt of it.

Mr. Collett: The answer is purely hearsay.

The Court: I will allow the answer to stand. If there is any question about it, you may cross-examine.

Cross-Examination

By Mr. Collett:

Q. You say you left Toi Shan City in [72]
C.R. 35? A. Yes.

(Testimony of Wong Gong Fay.)

Q. What month and day, if you remember?

A. I cannot remember the exact date, but it was on the fifth month.

Q. The fifth month of C.R. 35. What is that American style?

The Interpreter: From May 31 to June 29, 1946.

Mr. Collett: 1946.

Q. (By Mr. Collett): And you went from Toi Shan City to where?

A. I went to Hong Kong.

Q. Did you live continuously in Hong Kong from 1946 to 1951? A. Yes, I was in Hong Kong.

Q. Continuously?

A. Yes. I stayed there until I left for the United States.

Q. Have you been in any other part of China?

A. What period are you referring to?

Q. At any time.

A. No. When I was young I was going to school.

Mr. Collett: What dialect is he speaking, Mr. Interpreter?

The Interpreter: Toi Shan.

Mr. Collett: The only two places, except for the period of going from one place to the other, that you have been, is in Toi Shan City and Hong Kong, is that correct? [73]

A. I was born in Toi Shan City, but later lived in the village.

Q. You lived in the village? A. Yes.

Q. What village?

A. Leung Chew. At home.

(Testimony of Wong Gong Fay.)

Q. Where is it with reference to Toi Shan City?

A. You mean my village?

Q. Yes. A. Four to five lis.

Q. In which direction from Toi Shan City?

Mr. Collett: Did you answer?

The Interpreter: No. He just repeated my question, that's all.

The Court: Ask him again.

A. I am not clear about that.

Mr. Collett: When you went from Toi Shan City to Hong Kong, how did you go?

A. I boarded a bus from Toi Shan City to Seong Cheong City, and then from there by boat to Hong Kong.

Q. How do you spell that intervening city?

A. Seong Cheong.

Mr. Collett: Seong Cheong?

The Court: Maybe the witness can find it for you.

Q. (By Mr. Collett): During the time that you were living [74] in the village, were the Japanese in that town at any time? A. Yes.

Q. When did you first see any Japanese in your village?

A. I really couldn't remember exactly now. We fled from the village quite a few times.

Q. There were Japanese actually in your village? A. Yes.

Q. Do you remember the year?

A. I cannot remember.

Q. Have you at any time been in any other city

(Testimony of Wong Gong Fay.)

or town in China than Toi Shan City, your village and Hong Kong? A. No.

Q. You are speaking Toi Shan dialect now, is that correct? A. Yes.

Q. Do you speak any other dialect?

A. No, sir.

Q. What did you do while you were in Hong Kong from 1946 to 1951?

A. When I first went out there I worked.

Q. Where? A. At the Boh Geong Store.

Q. Where did you live?

A. At the place where I worked.

Q. How long did you work there?

A. Few years. [75]

Q. Well, how many years?

A. I worked there until I left for the United States.

Q. Did you work continuously in that place from the time you arrived there until you left for the United States?

A. Yes, I worked there, but I later also worked across the Bay.

The Court: In Oakland?

The Witness: No, sir.

Q. (By Mr. Collett): What do you mean by "across the bay"? A. Kaloon.

Q. When did you go to work at Kaloon?

A. In C. R. 36—1949.

Q. How long did you work in Kaloon?

A. I worked there until the latter part of C. R.

(Testimony of Wong Gong Fay.)

Q. How many months did you work there?

A. About a year or so.

Q. For whom did you work there?

A. For a friend.

Q. What was the name of the friend?

A. Lee Fong.

Q. You said you received some money from the United States. How did you receive that money?

A. What kind of money are you referring to?

Q. Money that you received from the United States.

A. You mean the money that my father sent to me? [76]

Q. I am speaking about money you received from the United States.

A. It was the money sent to me from the United States. It couldn't be any other person than my father.

Q. When did you first receive any money from the United States.

A. I can hardly remember which was the first time, because I often received money from my father.

Q. Do you have any letter or receipt or paper to show money that you received from the United States?

A. I had some letters that my father sent to me and also the checks, but the checks were cashed and I did not bring any letter with me when I left for the United States.

(Testimony of Wong Gong Fay.)

The Court: We will take the adjournment until ten o'clock tomorrow morning.

(Whereupon an adjournment was taken until the hour of 10:00 o'clock a.m., Friday, May 8, 1953.) [77]

FRIDAY, MAY 8th, 1953—10:00 A.M.

WONG GONG FAY

resumed the stand in his own behalf, having been previously sworn through the Interpreter, testified further as follows:

Cross-Examination

(Resumed)

By Mr. Collett:

Q. You have told us that in June, 1946, you went to Hong Kong and that you worked in Hong Kong until 1950; that you went over to Kaloan and went to work.

What kind of work did you do in Hong Kong?

A. I was working in the weaving factory.

Q. What kind of a factory? A. Weaving.

Q. What kind of weaving? A. Towels.

Q. Had you engaged in weaving towels prior to that time that you went to Hong Kong?

A. No.

Q. That was the first time you engaged in such the time that you went to Hong Kong?

Q. Was that the first type of employment that you had in Hong Kong?

(Testimony of Wong Gong Fay.)

A. No. I was not engaged in that sort of work when I was in Hong Kong. I started to work in the weaving factory when I [78] was in Kaloon.

Q. I previously asked you what you were doing in Hong Kong and you told us that you were weaving towels in Hong Kong. Now you say you didn't weave towels in Hong Kong, that it was Kaloon, is that right?

A. Yes. I did not work in the weaving factory in Kaloon until I went there. At first when I was in Hong Kong I worked as a service boy for the Bow Geong Company.

Q. Didn't you understand my first question when I asked you what sort of work you were doing in Hong Kong?

A. Yes. I thought you were talking about Kaloon.

Q. How soon after you arrived in Hong Kong did you go to work?

A. Soon after I arrived at Hong Kong and stayed there for about a week I started to work for the Company.

Q. That was in C. R. 35, as you previously testified. Now, you say you went to Kaloon in C. R. 39?

A. C. R. 39.

Q. You previously told us it was C. R. 39. C. R. 39 was not the correct year, was that right?

A. C. R. 38 is correct.

Q. What month?

A. I cannot remember it now. It was in C.R. 38.

Q. What season of the year?

(Testimony of Wong Gong Fay.)

A. I cannot remember now. I can only remember it was in [79] C. R. 38.

Q. During the time you were in Hong Kong, did you ever leave Hong Kong to go anywhere else in China? A. No.

Q. You did not leave Hong Kong at any time during the period from June of 1946 or C. R. 35 to C. R. 38, when you went over to Kaloan, is that right? A. Yes.

Q. After you went over to Hong Kong, how long did you stay there?

A. Until the latter part of C. R. 39. I then returned to Hong Kong and started arrangements to come to the United States.

Q. C. R. 39 is 1950, is that correct, Mr. Interpreter?

The Interpreter: Yes, sir.

Q. (By Mr. Collett): Do you recall what month it was in C. R. 39?

A. The latter part of the tenth month.

Q. That would be which month in the American calendar?

The Interpreter: The 1st part of December, 1950.

Mr. Collett: December?

The Interpreter: Yes, sir.

Q. (By Mr. Collett): Both Kaloan and Hong Kong are within the area that is controlled by the British, is that correct?

A. I really can't understand fully about who is being [80] controlled over such land. I was only a

(Testimony of Wong Gong Fay.)

country boy. I came out from inland China.

Q. During the time from C. R. 38 to December 1950, C. R. 39, did you at any time cross from the area in which the British Government was in control over to the area in which the Chinese Government was in control? A. No.

Q. Then for the entire period from when you left Toi Shan City, June, 1946, until you left Hong Kong to come to the United States, you were either in Hong Kong or Kaloon? A. Yes, sir.

Q. Where do you live now? A. Now?

Q. Yes. A. In Sacramento.

Q. What address?

A. 904 Second Street, the Sing Cheong Laundry.

Q. Is that where you work?

A. I do not consider myself working there as a permanent worker. I help out in the laundry.

Q. Well, have you been working there every day for the past month? A. Yes, sir.

Q. Have you been working there every day for the past six months? [81]

A. Yes, I have been there all the time.

Q. Well, have you been working there for the past year? A. Yes.

Q. What kind of work do you do?

A. Forwarding the clothing, wrapping them up, and divide laundry for washing.

Q. What time do you go to work in the morning?

A. I do not have a set time to work there. I go there whenever I wish.

(Testimony of Wong Gong Fay.)

Q. Well, do you live—strike that.

Do you sleep at that laundry? A. Yes, sir.

Q. Do you eat your meals there?

A. Yes, sir.

Q. Who operates the laundry?

A. It is a partnership business.

Q. What are the names of the partners?

A. Some person of the Chin family.

Q. Which family?

A. Chin, (Spelling)—Lee. (Spelling) L-e-e and Yung (Spelling) Y-u-n-g.

Q. Who employed you?

A. After I was admitted, my father told me to go there to work, and he said his friend there was Mr. Chin.

Q. Do you recall the date that you arrived in San Francisco? [82]

A. I think it was on April 22, 1951.

Q. And when were you released by the Immigration officers?

A. Chinese Reckoning, that was in C. R. 40, which was 1951, I was permitted to come.

Q. 1951, what month? A. April.

Q. April the 22, 1951, you say you arrived in the United States. When were you released by the Immigration—do you understand? First, you understand who I mean by the Immigration Officers?

A. Immigration what?

Q. The Immigration officers.

A. You mean in the United States?

Q. San Francisco. A. Yes, sir.

(Testimony of Wong Gong Fay.)

Q. You were in custody for a period of time after you arrived in San Francisco, is that not true? A. Yes, sir.

Q. Do you recall where you were?

A. At the the Immigration office.

Q. In San Francisco? A. Yes.

Q. Now the date that you were released from detention by Immigration, you recall the date that you were released?

A. I think it was on October, 1951. [83]

Q. October, 1951. Where did you go after you were released? A. I went to my father.

Q. Where?

A. At this Wing Heng Dong Company on Grant Avenue.

Q. And how long did you stay there?

A. About one week to two. But I did not live at the Wing Heng Dong Company.

Q. Where did you live?

A. I went to live in a hotel.

Q. You lived in a hotel for about one week after you were released from detention, is that right? A. A week or so.

Q. Then where did you go?

A. I went to Sacramento.

Q. When you first went to Sacramento, did you go to the Sing Cheong Laundry? A. Yes.

Q. And you have been at the Sing Cheong Laundry from that time up to the present time, is that correct? A. Yes.

Q. Did you come to San Francisco during the

(Testimony of Wong Gong Fay.)

period from about November, 1951, to the present time? Did you come to San Francisco?

A. Yes, occasionally.

Q. How many times? [84]

A. I came out quite often. I cannot remember how many times now.

Q. Since the first of January of 1953, this year, how many times have you been in San Francisco?

A. I cannot remember how many times now, but I had been in San Francisco for visits.

Q. When did you come down from Sacramento for the purpose of this trial?

A. Sometime—I came out here for a visit.

Q. During the time that you lived in a hotel, the week after you were released, with whom did you live?

A. I lived there alone.

Mr. Collett: That is all.

(Witness excused.)

Mr. Fusco: If your Honor please, Exhibit 1, may I ask that it be admitted in evidence and made a part of the record?

The Court: Admitted and marked.

Mr. Fusco: Likewise I ask that Exhibits 2, 3, 4, 5 and 6, which purport to be authenticated report cards of the plaintiff Wong Gong Fay, may I ask they be introduced in evidence?

Mr. Collett: Object, if the Court please. There is no foundation for those documents.

The Court: Why are you objecting? What is the reason for it? Make your record. [85]

Mr. Collett: Well, if the Court please, there has been no showing as to when they were received, except on cross-examination, an indication that they may have all been received at once. There is no other testimony except that he received them by mail. First it was that they were received for each year and that was denied and changed and testified that they were all received in one group. And furthermore, they are immaterial, irrelevant, incompetent, as to the facts in issue before this Court, and self-serving, and upon those grounds, I object.

The Court: I will allow them in. Objection overruled.

(Thereupon Exhibits 1, 2, 3, 4, 5 and 6, heretofore marked for Identification, were received in evidence and marked respectively Plaintiff's Exhibits 1, 2, 3, 4, 5 and 6.)

Mr. Fusco: May I ask that Exhibit No. 7, a copy of the witness' Wong Hai's tax return, be admitted in evidence?

The Court: Admitted and marked.

Mr. Collett: No objection.

(Thereupon Exhibit 7, heretofore marked for Identification, received in evidence and marked Plaintiff's Exhibit No. 7 in evidence.)

Mr. Fusco: I wish to present my next witness, your Honor. Mr. Chin Young Fay.

I don't know what happened to our witness. If he is not here now, I will submit it. [86]

That is my case, your Honor. The witness is not here. Submit the case.

Mr. Collett: Your Honor, this is a case in which the action is against the Attorney General of the United States, which of course that means that upon the plaintiff's approach to the borders of the United States, Immigration conducted hearings with regard to that claim. A board of special inquiry appeal was dismissed. There is therefore a record, as far as Immigration is concerned.

Now, although the case of Wong Wing Phew, in the Court of Appeals for this District, has given us an indication that in cases where the claimant came in by passport, which is under at least a partial cloak of citizenship, that the denial of immigration gives rise to a right to file under Section 903-A an independent action. In cases where the individual comes in by a certificate of identity, as in this case, or travel documentation, the claim is not under the guise of citizenship, but is simply for purposes of having immigration ascertain whether or not the claimant is valid in his claim.

Under the Wei Ying Og Case, which is discussed at length in the Ly Shue Case, in the opinion of Judge Goodman, Judge Hotzoff, in holding that although habeas corpus may have been resorted to by the claimant, that nevertheless he could file an action under 903 which was in the nature of a proceeding de novo. We distinguish the proceeding de novo from an independent action in that de novo relates it to proceedings such as in admiralty or in equity whereafter a determination by a board

or an administrative agency, the Court may hear the evidence and may hear additional evidence, but also takes the record which appeared, which was presented to the administrative agency, and reaches its own conclusion at the conclusion of the trial.

With that in mind, I offer into evidence the Immigration record. I feel that it should be offered to the Court, and, if counsel objects, the Court can make its ruling accordingly, but I feel that it is incumbent upon the defense to offer the record of Immigration for whatever purpose the Court may use it.

Mr. Fusco: Your Honor, I object to the admission of this Immigration record on the basis of Wong Wing Phew. Trial de novo means exactly what it says, de novo, a new trial. It means a new trial. We are entitled to a new trial, and I object on those grounds.

The Court: The objection will be sustained.

Mr. Collett: There is no further evidence, if the Court please. The matter is submitted as to the evidence.

Mr. Fusco: The matter is submitted.

The Court: You may argue your case, if you wish.

(Thereupon arguments of counsel presented.)

The Court: The judgment will be entered for the defendant, upon findings of fact and conclusions of law.

Prepare the judgment and findings for this record.

How long will it take you to do that?

Mr. Collett: The period, in accordance with the local rules, if the Court please, is five days. They will be filed within five days.

The Court: Put the case over a week.

That is all.

[Endorsed]: Filed August 6, 1953. [89]

The United States District Court, Northern District
of California, Southern Division

No. 30960

Before: Hon. George B. Harris, Judge.

WONG GONG FAY,

Plaintiff,

vs.

J. HOWARD McGRATH, as Attorney General of
the United States,

Defendant.

No. 31316

LEO WING ON and LEO WING WAH,

Plaintiffs,

vs.

J. HOWARD McGRATH, as Attorney General of
the United States,

Defendant.

REPORTER'S TRANSCRIPT

Tuesday, February 3, 1953

ARGUMENT OF MR. SING

The Court: I notice, Mr. Hertogs, the gentleman with you has five or six cases of a like nature.

Mr. Hertogs: Yes, Mr. Sing.

The Court: Do you have any comment to make on this motion, because I am going to give it very serious consideration?

Mr. Sing: May it please the Court, Mr. Collett mentioned our cases, too. I have already submitted points and authorities in support of our motion for substitution and in opposition to Mr. Collett's motion to dismiss.

Mr. Collett: Did you file those this morning?

Mr. Sing: I filed them yesterday.

The Court: Will you get those authorities? What, if any, authorities did you submit other than the two?

Mr. Sing: As for authorities, counsel for the defendant in that case opposed our motion for a substitution, basing his whole opposition on one case of *Snyder vs. Buck* and also that Rule 6(b) does not permit the Court to extend time under Section 25(b) of the Federal Rules of Civil Procedure.

In our memorandum I have already set out that the set of facts in the defendant's case of *Snyder vs. Buck* is completely different than in the cases at bar. Mr. Fusco [2*] has already dwelled upon that point, so we won't go into that point.

Mr. Hertogs mentioned the case of *Fleming vs. Goodwin*, that was the case cited in 165 Fed. (2nd) 334. That explains the purpose of Section 25(b). That was a case where the action was filed six

*Page numbering appearing at top of page of original Reporter's Transcript of Record.

months after. That goes in point with our cases. It was the contention of the defendant that it was not timely filed. The Court in that case granted the motion for substitution and held that if they held that such rule abated the case it would be to glorify form over substance. And it goes on to say that the purpose of the Federal Rules of Civil Procedure was to provide for continuance of an action that was personal in nature and it covers only those actions in which a public officer is a party and would abate upon his separation from office. In our cases the action continues.

Then the case of *Fleming vs. Peoples Natural Gas Company* in 8 FRD, 42, following *Fleming vs. Goodwin*, granted a motion for substitution which was also filed after the six months' limitation period.

The Court: Those cases are set forth in your memorandum?

Mr. Sing: Yes, in the memorandum in Civil Case 30127, *Lew Scheck Shan and Lew Sheck Tune vs. McGrath*.

Then counsel for the defendant goes on to motion Rule 6(b) of the Federal Rules of Civil Procedure. This rule gives [3] the Court the discretion to enlarge the time limit and it also goes to the extent of giving the Court the right to revive it after it has expired. And in *Barron vs. Holtzoff*, Federal Rules of Civil Procedure, it was pointed out that the purpose of the rule was to divest the Court of jurisdiction to entertain motions for a new trial and also on the time limit of taking the appeal. And even in those limitations of time limit for taking

an appeal and time limit on motions for a new trial, the Court there had also extended and enlarged the time limit where they showed excusable neglect.

Then the Court goes on to say in *United States vs. Saunders Petroleum Company*, 7 FRD, 608, that the Statute and Rules relating to substitution of successors is procedural only, it doesn't affect the substantive rights of the parties, and where the official had no personal interest in the subject matter and there was no change in the cause of action, substitution of parties is always allowed.

Then as to cases where the six months' limitation applies, *Ralph De Oench Company vs. Woods*, 171 Fed. (2nd) 112 says that the six months' limitation for substitution of successor in public office applies only to actions which are of a nature that they would abate on separation from office.

Mr. Collett has mentioned the fact of skipping from one party to another party; that between the time Mr. McGrath went out and Mr. McGranery went in, Phillip Pearlman was [4] acting attorney general for some time, too. However, there is a case of *Bowles vs. Goldman*, 7 FRD 12, where Chester Bowles was the Housing Administrator at that time and he resigned as the public official and was succeeded by Paul Porter. No substitution was made by the plaintiff during this interval until Paul Porter resigned and then Phillip Fleming took over. In that case the defendant then objected to the substitution because Porter was not substituted and that they waited until Chester Bowles went

out, Porter went in, Porter went out and Fleming went in. But the Court in that case granted substitution also.

It has been held that the power of Federal Courts to amend pleadings in a matter of form at any stage is liberally construed. This is in the case of *United States vs. Koike* in 164 Fed. (2nd) 155.

And there is the case of *Seven Oaks vs. Federal Housing Administration*, 171 Fed. (2nd) 947. The Court in that case granted the substitution to the amendment of parties saying that there had been no change of the defendant in the case; that dismissal under Rule 25 was not necessary, and that the use of the public officer's name in our cases was a mere formality, and it is actually a suit against the Government, and regardless of the captions in our cases, the issues in our cases do not change, the real party is still the same and that the defendant J. Howard McGrath was named as a defendant at the time of the institution of the suit merely in his nominal capacity and as a representative for those purposes.

The Court: How did you happen to permit the time to lapse in your cases?

Mr. Sing: The cases were brought against J. Howard McGrath, and inasmuch as it was a case strictly against J. Howard McGrath in his representative capacity and it was a 503 action, we just felt that inasmuch as it was, why burden the courts with substitution when McGrath goes out, Pearlman goes in, and then McGranery comes in, and then we would be substituting Pearlman, we would

be substituting McGranery, and then we would be substituting Brownell, at the same time.

The Court: You considered the political aspects as well as the legal aspects, did you?

Mr. Sing: Yes, your Honor.

Mr. Collett: It looks like he was prophetic; he anticipated Mr. Brownell's appointment.

Mr. Sing: When Mr. McGranery was appointed attorney general, there was mention at the time that he was only going in for the purpose of clearing up what had to be cleared up and he would be out. It was not anticipated that Mr. McGranery would stay so long either.

Our purpose of substitution here is nothing more than [6] to keep the records straight, and it is merely an amendment taking one name out and putting someone else's name in. The defendant has always been the same.

The Court: It is not as easy as that. I suppose if lawyers ever have a purgatory or a hell that they go to, a lawyer's hell, they will be confronted when they reach the portals of that place with "Time, time"; there will be a man there with a great big club cracking his knuckles and he will say that you failed within 24 hours to do such and such. I think it shortens the lives of men; that in its philosophy of changing one political appointee to another political appointee Congress in its divine wisdom will see fit to permit a substitution, when, as it appears in this case, there may well be excusable neglect. California has some very benign legislation on the subject, when a man fails to do

something within a given period of time, he may under Section 437, as I recall, file an affidavit of excusable neglect. It is generally the lawyers dereliction and not the litigant's. And taking the case at bar in this matter before the Court, the Wong Gong Fay case—bear in mind I don't have a thing that I do not know a thing about the facts; all I read is the verified complaint—the complaint states that the plaintiff is in custody.

“Plaintiff has been and at all times herein stated is still being held in restraint and [7] he is being denied his liberty by the defendant in that the plaintiff is confined in the Immigration Detention Quarters at San Francisco, and further that the defendant”——

That is J. Howard McGrath—

“has ordered the plaintiff to be deported from the United States as an alien.

“That plaintiff's father, Wong Hie, is a citizen and national of the United States and is now a resident of the city and county of San Francisco, State of California, and further that plaintiff was born on May 16, 1926, in Toyshan, Kwangtung, China, and that the plaintiff herein is the natural and legitimate son of the above-named Wong Hie,”

and so forth.

“Paragraph 4. That plaintiff claims a right and privilege as a national and citizen of the United States * * *”

Paragraph 5. "That the plaintiff has prosecuted this action pursuant to the provisions of Section 503 of the Nationality Act of 1940

* * *"

When you place the verified petition or the complaint in juxtaposition to the matters of forfeiture of substantial rights or rights that allegedly are **substantial**, and weigh them in the balance, it seems to me that the matters of form should be relegated to the limbo of the past and that the matters of substance should be considered by these Courts.

I realize that legislation is there, and I am fairly conversant with many of these cases. However, I haven't read this 165 Fed. (2nd) 334. I should like, if possible, some very quick ruling from our Court of Appeals to set at rest in this Circuit the problem that besets and bedevils these Courts on these procedural matters.

I have a situation before me on six or seven cases of Mr. Petros and Mr. Purcell wherein abatement is sought, and I find extremely more difficulty in deciding these matters wherein substantial rights are being frittered away on account of some obscure statute than I do in deciding cases that run five and six months and even longer.

I, too, practiced law. I realize the difficulties sometime, although notice was given in the Recorder of the fateful consequences of the failure to live up to the statutory mandate.

Mr. Collett: If the Court please, I am mindful of the difficulties of the Court of Appeals with regard to rules and the time within which you do

this and do that and how gleefully, apparently, with regard to the United States of America of late, they have been willing on just the slightest deviation from the amount of time to dismiss an appeal which [9] is a perfectly righteous appeal.

Now the rules are there. In many instances they are local rules, rules of the Court of Appeals. They are specified as time within which you are supposed to docket, to file your statement of points, the designation of record, to authorize the printing of the transcript, and the difficulties that are there on the matter of getting time, which your Honor has characterized possibly at some time when we are endeavoring to pass over the Great River and somebody will be clubbing you with a heavy club, and I'm sure I'll be there getting my share of it, if your Honor please. But nevertheless, it is not the power of this Court to make the rules, and the rule specifically states the amount of time within which certain things should be done. And as I state again, there is not even an attempt here to present any excusable neglect or inadvertence.

The Court: Pardon me; this gentleman whose name escapes me at the moment——

Mr. Sing: Mr. Sing.

The Court: Mr. Sing.

Mr. Sing: Yes, your Honor.

The Court: He points out that he was considering the political winds of fate.

Mr. Collett: Prophetically.

The Court: He says he didn't know whether it was going [10] to be Mr. Pearlman or an appointee

of Mr. Truman or an appointee of Mr. Eisenhower. And there he was, conjuring up of course with fate and perhaps permitting his clients to go down the river and forfeit their rights. Still he was conjuring and his mental processes were working.

Mr. Collett: Conjuring or conjuring, maybe.

The Court: Be that as it may, I have indicated to the attorneys in these Courts, and I reiterate that I believe there are deeper problems involved in deciding the fate of litigants and the liberties of men apart from the trivia of some statute wherein a person's rights are forfeited because he or she failed to come in within one day or forty-eight hours. And our liberal thinking in the liberal rules of procedure has exemplified the thoughts of our more forward looking Federal Judges in that connection.

I can't conceive that any of my brethren in the Court of Appeals gleefully dismiss appeals or gleefully do anything. I know sometimes they roll in torment over the problems that beset them on procedure. But I have said enough.

Mr. Fusco: I may add in closing that the problem as counsel has stated it is not too complex. We need not go into the question of time in respect to appeals, motions for a new trial. That all goes to matters where a person has had his day in Court.

The Court: Counsel, I have heard sufficient now.

Mr. Fusco: Yes, I realize that.

Mr. Hertogs: If the Court please, if I may say something, just changing the subject a little bit

here. As the Court is well aware, I have a number of motions under submission.

The Court: What are your motions?

Mr. Hertogs: That is for change of party in defendants in those cases, you remember those 212 cases.

The Court: You appeared in the Court of Appeals only the other day.

Mr. Hertogs: Yesterday.

The Court: What, if any, requirements were exacted of you in the Court of Appeals?

Mr. Hertogs: Their exact word that was used, which was furnished Judge Mathews by Judge Orr was "perfunctory"—

Mr. Collett: Which I challenge.

Mr. Hertogs: Which he challenged and I accepted.

The Court: Judge Mathews said it was perfunctory?

Mr. Hertogs: He didn't rule; we will probably have a ruling today or tomorrow, your Honor.

The Court: I would like to see that ruling.

Mr. Hertogs: And I took the exact language that I used in this Court, the verbiage that I used in this Court, on this motion in the Court of Appeals, so I would not have to prepare affidavits in 230 cases. [12]

The Court: I will look forward to that ruling.

Mr. Collett: If the Court please, I mentioned reading the complaint about a man being in detention. The man is not in detention; is that right?

Mr. Fusco: No.

Mr. Collett: Would you set the Court straight on that, Mr. Fusco?

The Court: I read from your petition. Is the man in custody?

Mr. Fusco: No, your Honor, I intended to discuss that, but other counsel interrupted. The man is not in detention; he has been out on bail. Bail has been provided.

Mr. Collett: If the Court please, I appreciate your Honor's consideration on the allegations of the complaint, but as I have stated, we have checked the record; there are 716 of these cases pending right here before this Court.

The Court: I realize that.

Mr. Collett: In each one of the cases as they have been proposed, why, it is on allegations of the complaint. A great many of them, we feel satisfied, are without proper foundation; but I have in mind that as I stated before——

The Court: That may well be, but let us assume that this gentleman has merit to his petition.

Mr. Collett: That may well be. The rules are still there, and this Court is here to apply the rules and it is up to counsel and plaintiff to see that their rights are properly taken care of and that they timely make the necessary motions that they have to present. It has both ways. The rule is there. Just as it is necessary to file your notice of appeal within a certain time; if you don't, you don't have an appeal.

The point I was going to make with this thing is the dual aspect of it. It is there on one hand

that this Court is looking to the individual; on the other hand it is the duty that is imposed upon this Court in the interests of its responsibilities as a Judge to apply the rules that Superior Courts as well as the Congress of the United States may have established.

Now in this particular instance for the Court to rule anything other than in accordance with the rule is to say that the rule isn't there, doesn't mean anything; it doesn't mean a thing; you don't have to substitute any party; there is no necessity for it; you must completely disregard the rule.

The Court: Well, the matter may be submitted.

[Endorsed]: Filed June 10, 1953. [14]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO TRANSCRIPT
OF RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of California, do hereby certify that the foregoing and accompanying documents and exhibits, listed below, are the originals filed in the above-entitled case, and that they constitute the record on appeal herein as designated by the attorney for the appellant:

Docket entries.

Complaint.

Answer.

Supplemental pleading and motion to substitute party defendant under rule 25(d) F.R.C.P.

Order granting motion to substitute McGranery for McGrath as party defendant.

Motion for rehearing.

Order denying motion for reconsideration.

Notice of motion and motion for substitution of party defendant.

Affidavit of Salvatore C. J. Fusco in support of motion to substitute party defendant.

Order substituting Brownell, Jr., for McGranery as party defendant.

Supplemental answer.

Order for judgment in favor of defendant.

Findings of Fact and Conclusions of Law.

Judgment.

Notice of Appeal.

Cost bond on appeal.

Order extending time to file record on appeal.

Designation of record on appeal.

Reporter's transcript, February 3, 1953.

Reporter's transcript, May 7, 8, 1953.

Plaintiff's exhibits 1, 2, 3, 4, 5, 6, 7, 8.

Government's exhibit A.

In Witness Whereof I have hereunto set my hand and affixed the seal of said District Court this 10th day of Aug. 1953.

[Seal]

C. W. CALBREATH,
Clerk.

By /s/ C. M. TAYLOR,
Deputy Clerk.

[Endorsed]: No. 13970. United States Court of Appeals for the Ninth Circuit. Wong Gong Fay, Appellant, vs. Herbert W. Brownell, Jr., Attorney General of the United States, Appellee. Transcript of Record. Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed August 12, 1953.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

United States Court of Appeals for the
Ninth Circuit

No. 13970

WONG GONG FAY,

Plaintiff,

vs.

HERBERT W. BROWNELL, JR., Attorney General
of the United States, Washington, D. C.,
Defendant.

STATEMENT OF POINTS

Plaintiff sets forth the following points on which he intends to rely on this appeal:

1. The court erred in holding that Wong Gong
2. The court erred in holding that Wong Fay, Fay, the appellant is not the son of Wong Hai.

the appellant, is not a national and citizen of the United States.

3. The court erred in holding that the appellant failed to sustain the burden of proof.

4. The court erred in holding that presumptions in favor of the plaintiff had been dissipated.

5. That the findings, conclusion and judgment of the district court are unsupported and contrary to the evidence of the record.

Respectfully submitted,

/s/ SALVATORE C. J. FUSCO,
Attorney for Appellants.

Service of copy acknowledged.

[Endorsed]: Filed September 3, 1953.

[Title of Court of Appeals and Cause.]

DESIGNATION OF RECORD ON APPEAL

Comes now the appellant by and through his attorney, Salvatore C. J. Fusco, in the above entitled matter, and hereby designates the entire record to be included in the transcript of record on appeal which is necessary for the determination of the points on which he intends to rely on appeal.

Respectfully submitted,

/s/ SALVATORE C. J. FUSCO,
Attorney for Appellant.

Service of copy acknowledged.

[Endorsed]: Filed September 3, 1953.